

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





H-7 (p. 5)

# Docket No. 75-7254

(F-58)

IN THE  
United States Court of Appeals  
For the Second Circuit

THE STATE OF NEW YORK,

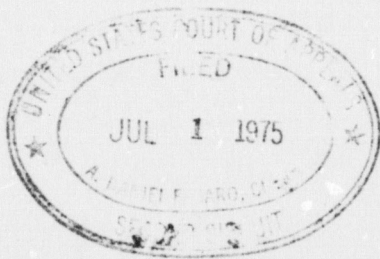
*Plaintiff-Appellant,*

—against—

DANNY WHITE, PAUL WHITE, JR., PAUL WHITE and NORMA WHITE, his wife, LORRAINE MONTOUR, THOMAS DELARANDE and LORRAINE DELARANDE, his wife, JOHN HEMLOCK, ALLEN HEMLOCK, DIANE HEMLOCK, EARL FRANCIS CROSS, CHRISTOPHER HEMLOCK, ANGUS DEER, DAVID DEER, DAVID DEERHOUSE, WARREN DEER, JIMMY DEER, PAUL WILLIAMS, ALEX AKWIENZIE, TOM COOK, DOUGLAS PINE, ANNIE JOCK, "JOHN" GAMBLE, first name John being fictitious, real first name not being known to plaintiff, person intended being in possession of State land in Town of Webb, Herkimer County; "JOHN DOE", "RICHARD ROE", "RITA ROE", "GERALD GOE", "JANE COE", "SAM FOE", "GLADYS HOE", "AL JOE", "JANE DOE", "SUE WOE", "PETER MOE", "PHILIP SOE", "CAROL ZOE", "DONALD POE", "FRED MOE", "BOB BOE", "WARREN KOE", "BILL VOE", and "JOE WOE", true names of parties being unknown, parties intended being in possession of State land in the Town of Webb, Herkimer County,

*Defendants-Appellees.*

## APPENDIX



LOUIS J. LEFKOWITZ  
Attorney General of the State of New York  
*Attorney for Plaintiff-Appellant*  
The Capitol  
Albany, New York 12224

NANCY STEARNS  
*Attorney for Defendants-Appellees,*  
c/o Center for Constitutional Rights  
853 Broadway  
New York, New York 10003

ROBERT T. COULTER  
*Attorney for Defendants-Appellees*  
3240 19th Street, N.W.  
Washington, D.C. 20010

FOLEY & FRYE  
*Attorneys for Applicant for Intervention,*  
Town of Webb  
185 Genesee Street  
Utica, New York 13501

HANCOCK, ESTABROOK, RYAN,  
SHOVE & HUST  
*Attorneys for Douglas L. Bennett,*  
Bonnie L. Bennett, Big Moose Property  
Owners Association  
One Mony Plaza  
Syracuse, New York 13202

B  
P/V

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## COMPLAINT.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

THE STATE OF NEW YORK,

Plaintiff,

-against-

DANNY WHITE, PAUL WHITE, JR., PAUL WHITE and NORMA WHITE, his wife, LORRAINE MONTGOUR, THOMAS DELARANDE and LORRAINE DELARANDE, his wife, JOHN HEMLOCK, ALLEN HEMLOCK, DIANE HEMLOCK, EARL FRANCIS CROSS, CHRISTOPHER HEMLOCK, ANGUS DEER, DAVID DEER, DAVID DEERHOUSE, WARREN DEER, JIMMY DEER, PAUL WILLIAMS, ALEX AKWIENZIE, TOM COOK, DOUGLAS PINE, ANNIE JOCK, "JOHN" GAMBLE, first name John being fictitious, real first name not being known to plaintiff, person intended being in possession of State land in Town of Webb, Herkimer County; "JOHN DOE", "RICHARD ROE", "RITA ROE", "GERALD GOE", "JANE COE", "SAM FOE", "GLADYS HOE", "AL JOE", "JANE DOE", "SUE WOE", "PETER MOE", "PHILIP SOE", "CAROL ZOE", "DONALD POE", "FRED MOE", "BOB BOE", "WARREN KOE", "BILL VOE", and "JOE WOE", true names of parties being unknown, parties intended being in possession of State land in the Town of Webb, Herkimer County,

CIVIL ACTION  
FILE NO.

COMPLAINT

Defendants.

Plaintiff by its attorney, Louis J. Lefkowitz, Attorney General of the State of New York, as its complaint against the above-named defendants alleges:

1. Plaintiff State of New York is a sovereign State with its Capital in Albany, New York.
2. Defendants are in illegal occupation of the hereinafter described premises on their claim that as members of the Mohawk Nation they have title to the same; and entered into possession of the property on or about June 1, 1974.
3. Jurisdiction is founded on 28 U.S.C. 1331(a), and the matter in controversy exceeds, exclusive of interest and costs, the sum of \$10,000.
4. This action is brought pursuant to 28 U.S.C. 2201 and 2202 and Fed. Rules Civ. Proc. rule 65, 28 U.S.C. to remove a cloud on title to the hereinafter described premises and to declare title to the same in the plaintiff and to secure possession from the defendants and to keep defendants from reentering the premises.

## Complaint.

5. The premises which are illegally occupied by defendants and owned by plaintiff are described as follows:

"All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in Township 8, John Browns Tract, County of Herkimer, New York, bounded and described as follows: Town of Webb

BEGINNING at the southwesterly corner of a parcel of land in said Township Eight known as parcel "C" being the same parcel "C" that was heretofore sold and conveyed to the People of the State of New York by Nehasane Park Association and William Seward Webb by deed dated January 16, 1896, and recorded in the Herkimer County Clerk's Office in Book of Deeds No. 157, at page 482, reference being made to said deed for the boundaries of said parcel "C", thence southwesterly along the northerly side of a parcel of land in said Township No. Eight known as Parcel "K" being the same parcel "K" that was heretofore sold and conveyed to the People of the State of New York by Nehasane Park Association and William Seward Webb by deed December 1, 1897 and recorded in Herkimer County Clerk's Office in Book of Deeds No. 164 at page 81, reference being made to said deed for the boundaries of said parcel "K", 19.25 chains; thence to the right 64 degrees and 15' twenty-three chains; thence to the left 20 degrees 45' 32 chains; thence to the right 90 degrees 65 chains, to the southeasterly corner of a tract of land in said Township No. 8 known as the Second Lake (now Dart's Lake) North Branch, Moose River Allotment; thence to the right 86 degrees along the southerly line of said Second Lake Allotment 88.50 chains to the West Line of aforesaid parcel "C", thence to the right 111 degrees 15' along the west line of aforesaid parcel "C" 69.50 chains to the place of beginning, being the same tract of land known as the Moss Lake Tract.

Together with all the right, title and interest of the parties of the first part in and to all lanes, trails, and roads running through, passing in front of or adjacent to the premises herein."

6. The premises which contain 612.7+ acres of land were conveyed to the plaintiff for the sum of \$783,000 by the Nature Conservancy by deed dated August 7, 1973 and recorded August 14, 1973 in the Office of the Clerk of the County of Herkimer in Liber of Deeds 629 at page 672 a copy of which deed to the plaintiff is attached hereto as Exhibit I.



## Complaint.

7. The said premises were theretofore conveyed to Nature Conservancy by Robert F. and Jane N. Rider by deed dated June 22, 1973 and recorded June 27, 1973 in Liber 628 of Deeds at page 587. The premises had been conveyed to Robert F. and Jane N. Rider by George H. Longstaff by deed dated February 12, 1973 and recorded February 26, 1973 in Liber 626 of Deeds at page 498 in the Office of the Clerk of the County of Herkimer. George H. Longstaff had become the owner of said premises as devisee under the last will and testament of Caroline S. Longstaff admitted to probate in Queens County Surrogate Office, New York State on October 19, 1937 and Caroline S. Longstaff had become owner of said premises by deed of Paul Sheldon and others dated August 24, 1920 and recorded October 2, 1920 in Liber 251 of Deeds page 7 in the office of the Clerk of the County of Herkimer.

8. Upon information and belief, George H. Longstaff, Robert F. and Jane N. Rider were in physical possession of the heretofore described premises occupying them for the purpose of a children's camp for a period of more than twenty years continuously prior to the conveyance of said premises to the Nature Conservancy.

9. The occupied lands heretofore described became part of the New York State Forest Preserve on their acquisition by the State of New York on August 7, 1973 and, pursuant to Article XIV, section 1 of the New York State Constitution, were mandated to be kept forever as wild forest lands never to be leased, sold or exchanged nor to have the timber thereon sold, removed or destroyed.

10. The rules of the New York State Department of Environmental Conservation, made pursuant to New York State Environmental Conservation Law, section 9-0105 having the force of State Law, concerning land owned by the State of New York in the New York State Forest Preserve, contained in 6 NYCRR provide as follows:



## Complaint.

"190.1 Fire. (a) No fires are permitted except for cooking, warmth or smudge. No fire shall be lit until all flammable material within three feet or more of the fire, as is necessary to prevent its spread, has been removed. No fires shall be left unattended until extinguished.

(b) All lighted matches, cigars, cigarettes or burning tobacco must be extinguished or deposited where they will not cause fire.

(c) No wood, except from dead and down trees or from supplies furnished by the department, shall be used for fuel.

"190.2 Official signs and structures. No official sign or structure shall be defaced, mutilated or removed.

"190.3 Camping sites. Areas used for temporary camping and adjacent State lands must be kept in a neat, clean and sanitary condition. Garbage and refuse must be deposited in receptacles provided, or buried, removed or burned. The waters on State lands must not be polluted in any manner, nor waste material of any kind deposited therein.

\* \* \*

"190.5 Camping permits. (a) Camping permits at the public campsites and on the State-owned islands in Lake George will be issued for periods not in excess of two weeks and may be renewed on a daily basis thereafter, depending upon availability of sites. At other locations the period covered by a camping permit will be at the discretion of the issuing officer.

(b) Except on the public campsites, and on Lake George, temporary camping is permitted without a permit for periods of three days or less, provided no such camp is located in a trail or within 150 feet of any spring or other source of water supply.

(c) No holder of a camping permit of any kind may claim any particular campsite from year to year or the exclusive use of the same.

(d) Upon termination of a camping permit, all equipment and supplies must be removed from State land. The storage of personal property on State land is not permitted."

## Complaint.

11. Upon information and belief, defendants have violated the New York State Constitution and said rules by chopping trees, defacing or marring the structures on said premises, burning garbage and refuse and staying on the said premises for a period of more than three days without any license or permit and continuing to remain on and refusing to move from said premises from the day of their entry on or about June 1, 1974 to the present date.

12. Defendants claim to be members of the Mohawk Nation and have issued what they have called the "Ganienkeh Manifesto" stating that they are entitled to possess these lands. Said Manifesto is attached hereto as Exhibit II.

13. Upon information and belief, said defendants have not been authorized by either the Mohawk Nation or the Iroquois Confederation of Indian Nations (of which the Mohawk Nation was a part) to take possession of these premises and moreover neither the Iroquois nor Mohawk Nations have any right title, or interest in said occupied lands for the hereinafter stated reasons.

14. The lands in question at one time prior to the Revolutionary War were part of the Mohawk Nation lands and the Mohawk Nation was part of the Iroquois Confederation of Indian Nations.

15. Upon information and belief, during the Revolutionary War the Mohawk Indians under the leadership of Joseph Brandt joined forces with the British against the colonists making a number of hostile raids upon the residents for the purpose of aiding and abetting the British in the Revolutionary War.

16. Upon information and belief, at the end of the Revolutionary War the Indians belonging to the Mohawk Nation voluntarily left the United States, apparently apprehensive of reprisal, and moved to Canada.



## Complaint.

17. Upon information and belief, the members of the Mohawk Nation expected, because of promises made to them, that the British Government would protect and provide for them because of their loyalty to the crown during the Revolutionary War.

18. Upon information and belief, as a result of this, Joseph Brandt petitioned Sir Frederick Haldimand, then Governor of Canada, to fulfill the promises made by his predecessors to compensate the Indians; and Sir Frederick Haldimand forwarded the petition to the King of England in 1783.

19. Upon information and belief, Sir Frederick Haldimand made a formal grant in the name of the King of England presenting some 12,000 square miles in Grand Valley, Ontario to the Mohawk Nation which became the headquarters of the Mohawk Nation.

20. Upon information and belief, on October 22, 1784 the United States of America proclaimed a treaty (known as the Treaty of Fort Stanwix) with the Iroquois Confederation of Indian Nations, by which treaty the United States of America ceded to the Iroquois Confederation of Indian Nations the rights to certain lands other than the lands subject to this action and by which treaty the Iroquois Confederation relinquished all claims to any other land in the United States. A copy of the Treaty of Fort Stanwix is attached hereto as Exhibit III.

21. Upon information and belief, present at the time of the signing of this treaty at Fort Stanwix were representatives of the Seneca, Onondaga, and Cayuga Nations of Indians; but the Mohawk Nation refused to join in said treaty.

## Complaint.

22. Upon information and belief, a further treaty was proclaimed on April 27, 1798 between the State of New York and the Mohawk Nation by which treaty the Mohawk Nation did "cede and release to the People of the State of New York forever all the right or title of the said nation to lands within the said State; and the claim of the said nation to lands within the said State is hereby wholly and finally extinguished."

23. After the treaty of April 27, 1798, the Mohawk Nation made no claim to the land which is the subject of this action or other lands in the State of New York.

24. The treaty of April 27, 1798 was a valid treaty, complied with the Indian Non-Intercourse Act (now 25 U.S.C., section 177), and was made in the presence of and with the consent of Isaac Smith, a Commissioner appointed by the United States to hold the treaty (Proclamation of Treaty, paragraph 1). By this treaty the Mohawk Nation forever gave up any land that they had theretofore had in the State of New York.

25. On August 17, 1798, the State of New York patented the lands in question and other lands to Alexander Macomb and a patent was issued to him.

26. The lands which are the subject of this action were a part of Great Tract 6 of the lands patented to Macomb. These lands subsequently were conveyed to John Brown who further subdivided them and have since been known as lands in the John Browns Tract.

27. Upon information and belief the title of plaintiff is derived from a chain of title commencing with Alexander Macomb, patentee of the Macomb patent, passing through John Brown into Carolyn S. Longstaff and as set forth in paragraphs 6 and 7 of this complaint to the State of New York which has good title to these premises.

28. The claims of defendants that they are owners of said land and their unlawful occupancy of said lands constitute a cloud on the title of the State of New York and constitute a violation of the right of the State of New York to exclusive possession of said land. A copy of the treaty is attached to this Complaint as Exhibit IV.



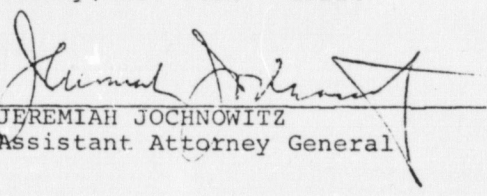
## Complaint.

WHEREFORE, plaintiff respectfully prays that this Court:

1. Assume jurisdiction.
2. Grant plaintiff a judgment removing, as a cloud on plaintiff's title, the effects of defendants' contention that they are rightfully in possession of the hereinbefore described premises and declaring that plaintiff is the owner in fee of said premises and restoring possession of the premises to plaintiff and that the defendants be barred from reentering possession of the same.
3. Award to plaintiff the costs and disbursements of this action.
4. Grant plaintiff such other and further relief as to the Court seems just and proper.

LOUIS J. LEFKOWITZ  
Attorney General of the  
State of New York  
Attorney for Plaintiff  
Office and P. O. Address  
The Capitol  
Albany, New York 12224

By

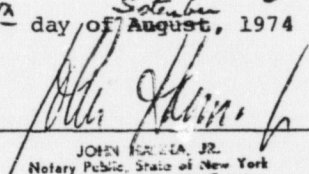
  
JEREMIAH JOCHNOWITZ  
Assistant Attorney General

## Complaint.

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF ALBANY )

JAMES BIGGANE, being duly sworn, deposes and says that he is Commissioner of the New York State Department of Environmental Conservation, and is duly authorized to act for and on behalf of the State of New York in the within action, that the complaint is true to his own knowledge except as to matters therein stated to be alleged on information and belief and as to these matters he believes it to be true, the source of information being departmental files and records, historical documents, and history books.

Sworn to before me this  
9<sup>th</sup> day of <sup>September</sup> August, 1974

  
JOHN M. KELLY, JR.  
Notary Public, State of New York  
Qualified in Columbia County  
Commission Expires March 30, 1976

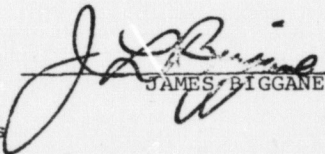
  
JAMES BIGGANE



Exhibit I — Deed  
attached to Complaint.

# This Indenture,

Made the 7<sup>th</sup> day of August nineteen hundred and seventy-three

**Between** THE NATURE CONSERVANCY, a non-profit corporation organized under the laws of the District of Columbia, having its office and principal place of business at 1800 North Kent Street, Arlington, Virginia 22209

part y of the first part,

and THE PEOPLE OF THE STATE OF NEW YORK

part ies of the second part,

**Witnesseth**, that the part y of the first part, in consideration of Seven hundred Eighty-three thousand and no/100 (\$783,000.00)

Dollars,

lawful money of the United States,

paid by the part ies of the second part

do es hereby grant and release unto the parties of the second part,

Their successors and assigns forever,

**All** that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in Township 8, John Browns Tract, County of Herkimer, New York, bounded and described as follows: Town of Webb  
BEGINNING at the southwesterly corner of a parcel of land in said Township Eight known as parcel "C" being the same parcel "C" that was heretofore sold and conveyed to the People of the State of New York by Nehasane Park Association and William Seward Webb by deed dated January 16, 1906, and recorded in the Herkimer County Clerk's Office in Book of Deeds No. 157, at page 482, reference being made to said deed for the boundaries of said parcel "C", thence southwesterly along the northerly side of a parcel of land in said Township No. Eight known as Parcel "K" being the same parcel "K" that was heretofore sold and conveyed to the People of the State of New York by Nehasane Park Association and William Seward Webb by deed December 1, 1897 and recorded in Herkimer County Clerk's Office in Book of Deeds No. 164 at page 81, reference being made to said deed for the boundaries of said parcel "K", 19.25 chains; thence to the right 64 degrees and 15' twenty-three chains; thence to the left 20 degrees 45' 32 chains; thence to the right 90 degrees 65 chains, to the southeasterly corner of a tract of land in said Township No. 8 known as the Second Lake (now Dart's Lake) North Branch, Moose River Allotment; thence to the right 86 degrees along the southerly line of said Second Lake Allotment 88.50 chains to the West Line of aforesaid parcel "C", thence to the right 111 degrees 15' along the west line of aforesaid parcel "C" 69.50 chains to the place of beginning, being the same tract of land known as the Moss Lake Tract.

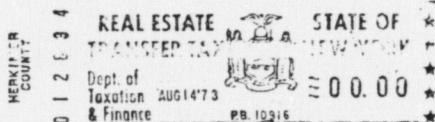
Together with all the right, title and interest of the parties of the first part in and to all lanes, trails, and roads running through, passing in front of or adjacent to the premises herein.

Exhibit I — Deed  
attached to Complaint.

BOOK 629 PAGE 673

Being the same premises conveyed to the party of the first part by deed from Robert F. Rider and Jane N. Rider, his wife, dated June 22, 1973 and recorded June 27, 1973 in Liber 628 at page 587.

As part consideration for this deed and by acceptance thereof the Grantee agrees to erect and maintain a permanent plaque or other appropriate marker at a prominent location on the above described premises bearing the following statement: "This Area was Acquired with the Assistance of The Nature Conservancy."



**Together** with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

**To have and to hold** the premises herein granted unto the parties of the second part, their successors and assigns forever,



Exhibit I — Deed  
attached to Complaint.

BOOK 123 PAGE 14

And the said party of the first part covenants as follows:

First. — That the party of the first part is seized of the said premises in fee simple, and has good right to convey the same,

Second. — That the parties of the second part shall quietly enjoy the said premises;

Third. — That the said premises are free from incumbrances;

Fourth. — That the party of the first part will execute or procure any further necessary assurance of the title to said premises;

Fifth. — That the party of the first part will forever warrant the title to said premises.

Sixth. — That the grantor, in compliance with Section 13 of the Lien Law, covenants that the grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and that the grantor will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

In Witness Whereof, the party of the first part has ~~caused its~~ caused its corporate seal to be hereunto affixed and these presents to be signed, ~~and by its duly authorized officers the day and year first above written.~~  
by its duly authorized officers the day and year first above written.  
In presence of:

*A. J. Shippey*

*Evelyn Henry*

THE NATURE CONSERVANCY L. S.

By *John W. Humke* L. S.  
John W. Humke  
Vice President

ATTEST: L. S.

*Burton G. Young*  
Assistant Secretary

State of } ss.:  
County of }

On the \_\_\_\_\_ day of \_\_\_\_\_ nineteen hundred and \_\_\_\_\_  
before me came

to me known and known to me to be the individual described in, and who executed, the foregoing instrument, and acknowledged to me that he executed the same.

Exhibit I — Deed  
attached to Complaint.

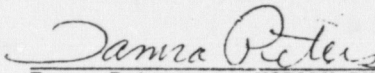
STATE OF VIRGINIA )  
 ) SS.  
—COUNTY OF ARLINGTON)

BOOK 629 PAGE 675

I, Tamra Peters, a Notary Public duly authorized in the County and State aforesaid, do hereby certify that on this day personally appeared before me John W. Humke and Richard G. Taurig who executed the foregoing writing as Vice President and Assistant Secretary, respectively, of The Nature Conservancy and acknowledged before me that they executed the same as such officers in the name of and for and on behalf of the said entity.

IN WITNESS WHEREOF I have hereunto set my hand and seal this

7<sup>th</sup> day of August, 1973.

  
Tamra Peters NOTARY PUBLIC

My Commission Expires 12/16/74

FORM 314 Certificate of Official Character.

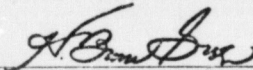
Commonwealth of Virginia

County of Arlington

to wit:

I, H. BRUCE GREEN, Clerk of the Circuit Court of the County aforesaid in the State of Virginia, the same being a Court of record, do certify that TAMRA PETERS, whose genuine signature is attached to the foregoing certificate is, and was at the time of signing the same, a Notary Public in and for the said County, duly commissioned and qualified, residing in said County and duly authorized, by virtue of his office, to take acknowledgements to deeds and other writings, and to administer oaths under the laws of this State. I further certify that the official acts of the said TAMRA PETERS are entitled to full faith and credit; that I am well acquainted with the handwriting of the said TAMRA PETERS and verily believe his signature to the foregoing proof or acknowledgment to be genuine; and that his attestation is in due form of law. I further certify that the laws of Virginia do not require the imprint of the Notary's seal to be filed with the authenticating officer.

In testimony whereof I have hereunto set my hand and affixed the seal of the said Court this 8<sup>th</sup> day of August, 19 73, and in the 198th year of the Commonwealth.



Clerk



2104

Reserve this space for use of Recording Office.

FOR DEED  
ALBANY, N.Y.  
THE NATURE OF THE DEED

To

THE PEOPLE OF THE STATE  
OF NEW YORK

# Deed

WARRANTY

Dated, \_\_\_\_\_, 19

The land affected by the within instrument lies in

RECORD AND RETURN TO  
NEW YORK STATE  
DEPARTMENT OF LAW  
90 SO. SWAN ST  
ALBANY, N.Y.

NEW YORK, DECEMBER COUNTY  
14 Day of Aug 1913  
1245 Deeds in back of 124  
at page 672 and examined

APPROVED AS TO FORM  
AND MANNER OF EXECUTION  
LOUIS J. LEFKOWITZ  
ATTORNEY GENERAL

BY *[Signature]*  
ADJUTANT

State of \_\_\_\_\_ } ss.  
County of \_\_\_\_\_ }  
On the \_\_\_\_\_ day of \_\_\_\_\_  
before me came \_\_\_\_\_  
witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly  
sworn, did depose and say that he resides in \_\_\_\_\_  
that he knows \_\_\_\_\_  
to be the individual described in, and who  
executed the foregoing instrument; that he, said subscribing witness, was present, and saw  
execute the same; and that he, said witness, at the same time subscribed his name as witness thereto.

to me known and known to me to be the individual described in, and who executed, the foregoing instrument, and acknowledged to me that he executed the same.

Exhibit II — Ganienkeh Manifesto  
attached to Complaint.

GANIEENKEH MANIFESTO

Ganienkeh - "Land of the Flint" - ancient homeland of the Mohawk Nation, whose descendants, with traditional natives from other Indian Nations, are moving back to repossess their natural heritage. Other native nations throughout the world have regained their lands and governments. The North American traditionalists are sure that the Government of the United States and its general public shall see the justice and the rights of the American Indian people to such a move.

Ganienkeh shall be the home of the traditional Red man. Here, according to the rights accorded every one else in the world, the Red man shall exercise his proven government and society according to his culture, customs and tradition. According to the rights of the human, he has the right to operate his state with no interference from any foreign nation or government. Here the people shall live according to the rules of nature. Here the Great Law of the Six Nations Iroquois Confederacy shall prevail. The people shall live off the land. The co-op system of economy shall prevail. Instead of the people competing with each other, they shall help and co-operate with each other. Here, they shall relearn the superior morality of the ancients.

It is not a backward step. The way to a proper, moral government, a practical and worthy economic system and a proper, moral human relationship is true progress. What is regarded as progress in this day and age is a road to destruction. Advanced technology abuses nature. The result has been the pollution of air, land, water and the human mind. A brief reflection reveals how abused nature repays in kind. The competitive society breeds frenzy, panic and tension. Under such a strain, the human mind breaks down. The continued abuse of nature shall result in the complete mental, physical and social breakdown of the competitive society. The main objective of human intelligence should be the peace and happiness of mankind on earth, not the profits saturation of a few tycoons and the worship of advanced technology. This kind of progress has brought the world to the brink of destruction.

Let there be a ray of light somewhere. Instead of abuse of nature, let there be an appreciation of nature. Ganienkeh calls all native American Indians who wish to live according to their culture, customs and tradition. Traditional Indians who answer the call and participate in the project shall be asked to prepare to meet unusual situations. Indians lived a million years without money and technology. They lived off the land. (Today's existing co-operative communities refuse Family Allowance, Welfare relief, Old Age Pension and still live very comfortably) Utilizing the co-op community system, the Indian State of Ganienkeh shall be a moneyless state. The requirement is enough land to grow food for all, enough grazing land for beef cattle or buffalo and enough timber land for building materials; and people who are ready to work towards its success.

The Mohawk Land was lost in an earlier century by fraud and its possession by New York State and the State of Vermont constitute illegal usurpation. No deed signed by Joseph Brant and the New York State agents can extinguish the rights of the Mohawks to their own country. The native North Americans not only have the rights but are duty bound to COMBATE THE WRONG COMMITTED BY JOSEPH BRANT AND THE NEW YORK STATE AGENTS AGAINST THE MOHAWK NATION. No individual Indian nor any individual Nation of the Six Nations Confederacy has the right to sell or give away land without the consent of the Grand Council of the Six Nations Confederacy. This was one of the findings of the N.Y. Senate investigating commission which ended in 1922.

Joseph Brant, who was not even a member of the Six Nations Confederacy, having before disqualified himself, did on March 29, 1797, with an alleged "power of attorney" make a deal with the New York State in which he gave away all the Mohawk Land to the said New York State. Several months before in November of 1796, the same Jos. Brant with the same "power of attorney" gave away large tracts of land in Ontario to his British friends. It was called 999 year leases at not cost, that is, no revenue was to accrue. Brant loved the white people so much or was mesmerized by them, that he pauperized outright, his own people to please his white friends.

ONLY COPY AVAILABLE

On the  
day of  
Count of  
before me came

Exhibit I — Deed  
attached to Complaint.

14

nineteen hundred and



Exhibit II — Ganienkeh Manifesto  
attached to Complaint.

(First words illegible) the representatives of the United Nations at San Francisco, California, April 13, 1945, the Six Nations Confederacy stated strongly that Jos. Brant was never given the right to give away their lands. Even if they had given Brant the alleged "power of attorney" it would be invalid as the deal would have to be consummated in the Grand Council of the Six Nations Confederacy. The fee simple is still vested in the Six Nations and the Mohawks have the aboriginal title to ancient Kanienkeh. No self respecting nation on earth would accept the dirty deal handed out by Joseph Brant and the New York State agents.

The Mohawk Nation, supported by traditional North American aboriginal natives from other native nations such as Ojibways, Crees, Algonquins and others, shall move into the Mohawk homeland of Ganienkeh. The combined nations shall establish the Independent North American Indian State of Ganienkeh. The Great Law-Gayanerokowa-which has lately spread all over native North America, shall be the Constitution of the Independent North American Indian State of Ganienkeh. The Mohawk Nation is not breaking away from the Iroquois Confederacy. It is repossessing its homeland with the help of other Red Indian traditionals and at the same time exercising its human rights accorded every one else in the world. Other native nations of Asia and Africa have regained lost lands and human rights. The United States restored Okinawa to Japan. We expect that the United States shall see their way to render the same justice to American Indians.

To any premise that the Mohawk project is an internal matter of any white people's government, certain steps are hereby taken, along with pointing out that the Indian Nations have long had their own organized governments and society, greatly preceding the people who have taken by usurpation authority of this area of the world and these steps include declaring to the world, news of this move on the part of the traditional Indians of North America. There shall be communication to every nation on earth and to their embassies at the United Nations with a request of foreign relations with the countries contacted, even if only on paper. That the Indian State of Ganienkeh has this right is guaranteed by the United Nations as the same right has been provided to new nations, who are actually old ones who have formerly been likewise defrauded of their lands and governments.

The U.S. is a member of the United Nations and sworn to uphold its principles. The U.N. proclaimed its Universal Declaration of Human Rights in December 1948 and it provides in Art. 15: (1) Every one has the right to a nationality. (2) No one may be arbitrarily deprived of his nationality nor denied the right to change his nationality.

We too are human and should have the rights accorded every one else in the world; the right to our nationality, the right of our nation to exist and the right to an area of land for our own territory and state where we can exercise our own proper government and society.

Notices shall also be sent to the President of the United States and to the Governors of the States of New York and Vermont. A request for foreign relations will be submitted to the U.S. Government. The procedure being followed to regain the ancient Mohawk homeland is consistent with human rights. Nature did not give certificates of possession to people she consigned to certain areas. Ours is the strongest naturally legal right known to man, aboriginal right.

Message to Congress, July 8, 1970.

"The first Americans-the Indians-are the most deprived group in our nation. On virtually every scale of measurement - employment, income, education, health-the condition of the Indian people ranks at the bottom. This condition is the heritage of centuries of injustice...The American Indians have been oppressed and brutalized, deprived of their ancestral lands and denied the opportunity to control their own destiny."

- President Richard M. Nixon

Today's white man may say that the injustice was done two centuries ago and it has nothing to do with him. The present Mohawk action is today, 1974 and will the white man continue to keep justice from the Indians?

**ONLY COPY AVAILABLE**

Exhibit II — Ganienkeh Manifesto  
attached to Complaint.

The Mohawk project is the way to real self determination — "control their own destiny". It is the way for the Red Indian race to regain lost pride, lost belief in humanity and to offset escapes from reality like alcohol, drugs and suicides that are destroying the Indian people.

FROM THE PREAMBLE TO THE CONSTITUTION OF THE UNITED NATIONS

1 4 5 0  
(circa?)  
O N O N D A G A

I am Deganawidah and with the Five Nations' Confederate Katiyaner I plant the Tree of the Great Peace...roots have spread out from the Tree of the Great Peace...and the name of these roots is the Great White Roots of Peace. If any man or any nation outside of the Five Nations shall show a desire to obey the laws of the Great Peace...they may trace the roots to their source...and they shall be welcomed to take shelter beneath the tree...

1 9 4 5

SAN FRANCISCO

As the peoples of the United Nations determined to save succeeding generations from the scourges of war...and to reaffirm faith in fundamental human rights...and to establish conditions under which justice and respect for law can be maintained...do hereby establish an international organization to be known as the United Nations.

.....

The noblest work of man is to find the formula for peace and happiness for every one on earth. To that end the most urgent needs of the nations of mankind are proper, moral governments, a practical economic system that eliminates poverty and advanced human relationship. Down through the ages, the world's wisest men have ever tried to find a formula of peace and happiness for suffering and deprived humanity. We've read of the efforts of Socrates, Plato, Aristotle and many others. Wise as they were, they all failed in this, mankind's greatest work.

Searchers for the formula have consulted the Holy Scriptures for instructions on devising a proper, moral government, but the teachers in the Good Book only spoke of kingdoms, which are total dictatorships and so had no idea of the government of, for and by the people. As no one has the right to be king or queen, it showed no idea of truly proper human relationship. Not knowing how to eliminate poverty, the holy teachers advocated poverty. Ask starving Indians in Northern Ontario reserves or in destitute areas in Indian if they are happy and at peace. They present people in the last stages of poverty and live in absolute misery and wretchedness. The holy Scriptures laid no claim to have a formula for peace and happiness on earth, only in the "after-life" — after you're dead. That's no good for people suffering the tortures of the damned in this life.

The East had its own famous wise men, among whom was Confucius. Wise as they were, they too could not find the key to peace and happiness, a proper moral government, a practical economic system and human relationship. It took the North American Deganawidah to find the formula. He took from natural righteousness (Kariwiyo) and made a Code which he called Gayanewikowa — known as the Law of the Great Peace. The Wise Man of the Ages, armed only with his Great Law, conquered the five most fierce nations imaginable in history; the Mohawks, Oneidas, Cayugas, Senecas and the Onondagas, united them in a Confederacy (Kanonsonnionwe in Mohawk), put them symbolically in one Long House and created peace and happiness that lasted until the white man came with his Dark Age. Gayanewikowa was the world's first national constitution and the first international law, the first code of human rights. The Iroquois Confederacy was the world's first people's republic with sovereignty for every one. All other countries were kingdoms and in a kingdom only the monarch has sovereignty. Everything and every one belonged to the king. The entire world may thank the Peacemaker Deganawidah for whatever rights and freedoms its people enjoy, BUT not all the rights and freedoms in the Great Law were adopted. The copiers kept full justice from their people. They left loopholes through which they may continue subtly to oppress humanity....

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Exhibit II — Ganienkeh Manifesto  
attached to Complaint.

There has been a continuous psychological warfare waged against the American Indians. It's every bit as deadly as the one with guns. The casualties are the drunks, drug addicts, suicides, renegades and traitors, all destroyed people. Indians are made to feel cheap and inferior. It results in identity conflict. Most Indians cannot find work in white man's mainstream and have to go on welfare relief and are called "welfare bums" to help them slide down in their self valuation.

The establishment of the Independent North American Indian State of Ganienkeh offers a positive solution to the problems of Indians. They can get away from the deleterious effects of welfare relief life. They can get away from the slums of cities. They will live in fresh unpolluted air. They shall help build an Indian State. They shall regain lost pride. They shall do it themselves. No longer shall white man's government say Indians are a burden on their country's economy via welfare relief. A well run co-operative community needs no financial help whatever. The white man will no longer be hurt where it hurts the most, in the pocket book. Wouldn't that alone be an inducive persuasion to the white man to let go the captive Indians? There may be some broken down, brain-damaged Indians, who because of fear and inferiority complex shall be told to go to Ganienkeh - at first.

The vanguard of strong, resolute men, women and children who shall establish the Indian State are traditionalists. They know their rights and are exercising it. The establishment of the Indian State gives the North American Indians an international personality and the right to establish foreign relations with other nations - all the rights mentioned above are guaranteed by the United Nations. Because of the nature of the movement, it is an international affair, not an internal matter.

The prospective members of the new Indian State shall be ready to use herbal preventative medicine, to keep sickness to a minimum (see Chief Smallboy's healthy camp). By following the above, the Independent North American Indian State of Ganienkeh shall be free of the white man. For the protection of the rights, culture, customs and traditions of the Indian people who participate and join in the project, the following is proposed:

ARTICLES OF AGREEMENT  
BY THE NATIONS WITHIN THE  
INDEPENDENT NORTH AMERICAN INDIAN STATE OF GANIEKHEH

PLEDGE OF ALLIANCE

Assembled this day on repossessed Mohawk Land, representatives of various North American Indian Nations have come to agreements with the host Mohawk Nation in matters attending the establishment of the Independent North American Indian State of Ganienkeh on the said Mohawk Land and the assembled Indian Nations agreed on the following:

1. That the host Mohawk Nation was dispossessed of its land by unjust actions on the part of a foreign people and its repossession was a result of a joint effort of the abovementioned Indian Nations whose signatures appear below; therefore the said North American Indian Nations concerned shall share in equality the benefits, protection, privileges, resources, production and the government of the said Independent North American Indian State of Ganienkeh.
2. That the assembled North American Indian Nations do make, ordain and publish an ALLIANCE and take the Pledge on the Wampum that they shall forever defend and protect each nation in the Alliance and the Great Law of the Six Nations Iroquois Confederacy, mankind's first and greatest national constitution.
3. That the assembled Indian Nations shall implement the Co-operative economic system to run the Independent North American Indian State of Ganienkeh and that each member nation shall take a certain area to locate its co-operative communities and that every subject of the said Independent North American Indian State of Ganienkeh is a member of the co-op, with the right to an equal share of the production and to this end, every subject of the said Independent North American Indian State of Ganienkeh shall pledge to do his share of the work to so earn his share of the production.

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**Exhibit II — Ganienkeh Manifesto  
attached to Complaint.**

2. That the assembled Indian Nations shall live off the land, grow food on every available acre, keep livestock and preserve the environment.

5. That each member Nation continue to exercise its own customs and traditional Indian spiritual ceremonies and each member Nations shall permit the other members to adopt any spiritual ceremony if they so desire.

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To make sure that the project succeeds in all its phases, it has been proposed that all traditional Indians joining and participating in the project take the pledge of allegiance to the Independent North American Indian State of Ganienkeh, while holding the string of sacred Pledge Wampum in hand and the following words to be used in taking the Pledge are hereby suggested:

"I, . . . . ., do pledge on the Sacred Wampum that I shall support, defend and protect the Independent North American Indian State of Ganienkeh. I accept the Great Law of the Six Nations Iroquois Confederacy as the Constitution of the Independent North American Indian State of Ganienkeh and do pledge to obey its laws and to defend it to the best of my ability. I do pledge to work in the interest of all the people of the Independent North American Indian State of Ganienkeh who are engaged in developing the Indian State into an example of proper, moral government and society. I accept the co-operative economic system as the most practical and worthy of the human state and do pledge to do my full share of the work to help in its success. I pledge to co-operate fully with others who are taking this Pledge of Allegiance to the end that the people of the Independent North American Indian State of Ganienkeh may realize fully their human rights and know peace and happiness."

**MOHAWK CAMP**

This area is part of the land under the legal and aboriginal title of the Mohawk Nation. We Mohawks have returned to our homeland. With the help of other traditional Indians, we shall make a home for any and all Indians who wish to live according to their own customs, culture and traditions.

Native nations all over the world have regained their lands. The U.S. restored Okinawa to Japan. We assume that this rendering of justice shall be extended to American Indians and that this land shall be restored to the Mohawks.

This CAMP is out to prove that the traditional Indians can live off the land without electricity, money, welfare relief or aid of any kind. White people are asked to help by not interfering. All we need is to be let alone and live in our own way.

All nations began with a camp.

Canvas signs at road entrances of camp.

Sign ends with a plea to let the Red man run his own life.

Any help from other nations, in the form of letters to the U.S. Government, appealing to its justice and to render the same to American Indians or through pressure by way of the United Nations shall be greatly appreciated.

The facts in the above GANIEHKEH MANIFESTO was compiled by Louis Hall  
Secretary-Caughnawaga Branch  
Six Nations Confederacy

**ONLY COPY AVAILABLE**



Exhibit III — Treaty of Fort Stanwix  
attached to Complaint.

APPENDIX B.

UNITED STATES TREATIES.

ARTICLES CONCLUDED AT FORT STANWIX, ON THE TWENTY-SECOND DAY OF OCTOBER, 1784, BETWEEN OLIVER WOLCOTT, RICHARD BUTLER AND ARTHUR LEE, COMMISSIONERS Plenipotentiary FROM THE UNITED STATES IN CONGRESS ASSEMBLED, ON THE ONE PART, AND THE SACHEMS AND WARRIORS OF THE SIX NATIONS ON THE OTHER.

The United States of America give peace to the Senecas, Mohawks, Onondagas and Cayugas, and receives them into their protection upon the following conditions :

*Article 1.* Six hostages shall be immediately delivered to the commissioners by the said nations to remain in the possession of the United States, till all the prisoners, white and black, which were taken by the said Senecas, Mohawks, Onondagas and Cayugas, or by any of them in the late war, from among the people of the United States, shall be delivered up.

*Article 2.* The Oneida and Tuscarora Nations shall be secured in the possession of the lands on which they are settled.

*Article 3.* A line shall be drawn beginning at the mouth of a creek about four miles east of Niagara, called Oyonwayea, or Johnson's landing place, upon the lake named by the Indians Oswego, and by us Ontario; from thence southerly in a direction always four miles east of the carrying path between Lakes Erie and Ontario, to the mouth of Tehoseroron, or Buffalo creek, on Lake Erie; thence south to the north boundary of the State of Pennsylvania; thence west to the end of the said north boundary; thence south along the west boundary of the said State to the river Ohio; the said line from the mouth of the Oyonwayea to the Ohio shall be the western boundary of the lands of the Six Nations, so that the Six Nations shall and do yield to the United States all claims to the country west of the said boundary, and then they shall be secured in the peaceful possession of the lands they inhabit east and north of the same, reserving only six miles square round the fort of Oswego to the United States for the support of the same.

*Article 4.* The commissioners of the United States, on consideration of the present circumstances of the Six Nations, and in execution of the humane and liberal views of the United States, upon the signing of the above articles, will order goods to be delivered to the said Six Nations for their use and comfort.

Proclaimed October 22, 1784.

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**Exhibit IV — Treaty of Relinquishment  
attached to Complaint.**

**RELINQUISHMENT**

To New York, by the Mohawk nation of Indians, under the sanction of the United States of America, of all claims to lands in that state.

March 29,  
1797.

At a treaty held under the authority of the United States, with the Mohawk nation of Indians, residing in the province of Upper Canada, within the dominions of the King of Great Britain, present, the honorable Isaac Smith, Commissioner appointed by the United States to hold this treaty; Abraham Ten Broeck, Egbert Benson, and Ezra L'Hommedieu, agents for the State of New York; captain Joseph Brandt and captain John Descroutyon; two of the said Indians and deputies, to represent the said nation at this Treaty.

Proclaimed  
April 27,  
1798

The said agents having, in the presence, and with the approbation of the said commissioner, proposed to and adjusted with the said deputies, the compensation as hereinafter mentioned to be made to the said nation, for their claim, to be extinguished by this treaty, to all lands within the said state: it is thereupon finally agreed and done, between the said agents and the said deputies, as follows, that is to say: the said agents do agree to pay to the said deputies, the sum of one thousand dollars, for the use of the said nation, to be by the said deputies paid over to, and distributed among, the persons and families of the said nation, according to their usages. The sum of five hundred dollars, for the expenses of the said deputies, during the time they have attended this treaty: and the sum of one hundred dollars, for their expenses in returning, and for conveying the said sum of one thousand dollars, to where the said nation resides. And the said agents do accordingly, for and in the name of the people of the state of New York, pay the said three several sums to the said deputies, in the presence of the said commissioner. And the said deputies do agree to cede and release, and these presents witness, that they accordingly do, for and in the name of the said nation, in consideration of the said compensation, cede and release to the people of the state of New York, forever, all the right or title of the said nation to lands within the said state: and the claim of the said nation to lands within the said state, is hereby wholly and finally extinguished.

Agents of  
New York  
pay to the  
Mohawk  
deputies  
\$1000 and  
their  
expense

The Mohawks  
cede all  
right, etc.  
forever.

In testimony whereof, the said commissioner, the said agents, and the said deputies, have hereunto, and to two other acts, of the same tenor and date, one to remain with the United States, one to remain with the said state, and one delivered to the said deputies, to remain with the said nation, set their hands and seals, at the city of Albany, in the said state, the 29th day of March, in the year 1797.

ISAAC SMITH.

Abm. Ten Broeck,  
Egbert Benson,  
Ezra L'Hommedieu,

Jos. Brandt,  
John Descroutyon.

WITNESSES:- Robert Yates, John Taylor, Chas. Williamson, Thomas Morris,  
The mark of John Abeel, alias the Cornplanter, a chief of the Senecas.

To the (four words illegible).

[ For a contract, dated Sept. 15, 1797, between Robert Morris and the Senecas, entered into under the sanction of the United States, see post Appendix 1. p. 661.]

F (61)



**Exhibit IV — Treaty of Relinquishment  
attached to Complaint.**

RELINQUISHMENT TO NEW YORK, BY THE MOHAWK NATION OF INDIANS  
UNDER THE SANCTION OF THE UNITED STATES OF AMERICA, OF ALL  
CLAIMS TO LANDS IN THAT STATE.

At a treaty held under the authority of the United States with the Mohawk Nation of Indians, residing in the province of Upper Canada, within the dominions of the King of Great Britain, Present, the Honorable Isaac Smith, commissioner appointed by the United States to hold this treaty; Abram Ten Broeck, Egbert Benson, and Ezra L. Commedien, agents for the State of New York; Captain Joseph Brandt and Captain Deserontyon, two of the said Indians and deputies, to represent the said Nation at this treaty.

The said agents having, in the presence and with the approbation of the said commissioner, proposed to and adjusted with the said deputies the compensation as hereinafter mentioned to be made to the said Nation for their claim, to be extinguished by this treaty to all lands within the said State: it is thereupon finally agreed and done, between the said agents and the said deputies as follows, that is to say: the said agents do agree to pay to the said deputies the sum of one thousand dollars for the use of said Nation, to be by the said deputies paid over to and distributed among, the persons and families of the said Nation, according to their usages; the sum of five hundred dollars for the expenses of the said deputies, during the time they have attended this treaty; and the sum of one hundred dollars for their expenses in returning, and for conveying the said Sum of one thousand dollars to where the said Nation resides. And the said agents do accordingly, for and in the name of the people of the State of New York, pay the said three several sums to the said deputies, in the presence of the said commissioner. And the said deputies do agree to cede and release, and these presents witness, that they accordingly do, for and in the name of the said nation, in consideration of the said compensation, cede and release to the people of the State of New York forever all the right or title of the said nation to lands within the said State; and the claim of the said nation to lands within the said State is hereby wholly and finally extinguished.

Proclaimed April 27, 1798.

## SUMMONS.

## United States District Court

FOR THE

NORTHERN DISTRICT OF NEW YORK

THE STATE OF NEW YORK,

Plaintiff,

-against-

CIVIL ACTION FILE NO. 74-370

DANNY WHITE, PAUL WHITE, JR., PAUL WHITE and  
 NORMA WHITE, his wife, LORRAINE MONTGOUR,  
 THOMAS DELARANDE and LORRAINE DELARANDE, his  
 wife, JOHN HEMLOCK, ALLEN HEMLOCK, DIANE  
 HEMLOCK, EARL FRANCIS CROSS, CHRISTOPHER  
 HEMLOCK, ANGUS DEER, DAVID DEER, DAVID  
 DEERHOUSE, WARREN DEER, JIMMY DEER, PAUL  
 WILLIAMS, ALEX AKWIENZIE, TOM COOK, DOUGLAS  
 PINE, ANNIE JOCK, "JOHN" GAMBLE, first name  
 John being fictitious, real first name not  
 being known to plaintiff, person intended  
 being in possession of State land in Town of  
 Webb, Herkimer County; "JOHN DOE", "RICHARD  
 ROE", "RITA ROE", "GERALD GOE", "JANE COE",  
 "SAM FOE", "GLADYS HOE", "AL JOE", "JANE DOE",  
 "SUE WOE", "PETER MOE", "PHILIP SOE", "CAROL  
 ZOE", "DONALD POE", "FRED MOE", "BOB BOE",  
 "WARREN KOE", "BILL VOE", and "JOE WOE",  
 true names of parties being unknown, parties  
 intended being in possession of State land  
 in the Town of Webb, Herkimer County,

SUMMONS

Defendants

To the above named Defendant :

You are hereby summoned and required to serve upon Louis J. Lefkowitz, Attorney  
 General of the State of New York,

plaintiff's attorney, whose address The Capitol, Albany, New York 12224

an answer to the complaint which is herewith served upon you, within 20 days after service of this  
 summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be  
 taken against you for the relief demanded in the complaint.

Clerk of Court.

Deputy Clerk.

Date: September 11, 1974

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.



## STIPULATION.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

THE STATE OF NEW YORK,

Plaintiff,

-against-

DANNY WHITE, ET AL.,

Defendants.

Civil Action  
File No. 74-CV-370

## STIPULATION

It is hereby stipulated and agreed by and between the attorneys for the respective parties that the time within which to answer or otherwise move with respect to the complaint herein be extended to December 1, 1974.

This stipulation shall not operate as a waiver of any defense or objection by the defendants and particularly shall not operate as a waiver of the defense of lack of jurisdiction, of the above Court. *JB*

LOUIS J. LEFKOWITZ  
Attorney General of the  
State of New York  
Attorney for Plaintiff

By

*Jeremiah Jochowitz*  
Jeremiah Jochowitz  
Assistant Attorney General

*Nancy Stearns*  
NANCY STEARNS  
Attorney for Defendants  
853 Broadway  
New York, New York 10003  
212, 674-3303

*Robert T. Coulter*  
ROBERT T. COULTER  
Attorney for Defendants  
3240 19th St., N.W.  
Washington, D.C. 20010  
202, 332-4282

So ordered:

\_\_\_\_\_  
U.S.D.J.

Date:

**MOTION FOR EXTENSION OF TIME  
TO ANSWER.**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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THE STATE OF NEW YORK,	:	
Plaintiff,	:	
v.	:	Civil Action File No.
DANNY WHITE, et al.,	:	74-CV-370
Defendants.	:	

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MOTION FOR EXTENSION OF TIME TO ANSWER OR  
OTHERWISE MOVE.

Defendants by their undersigned counsel hereby move for an extension of time of two weeks in which to answer or otherwise move in response to the complaint filed herein. Defendants answer is presently due on December 1, 1974 and defendants request permission to file their responsive papers on December 16, 1974.

The reasons for defendants' Motion are set forth in the annexed affidavit of Nancy Stearns.

Respectfully submitted,

*Nancy Stearns*

NANCY STEARNS  
c/o Center For Constitutional Rights  
853 Broadway  
New York, N.Y. 10003  
(212)674-3303

ROBERT T. COULTER  
3240 19th St., N.W.  
Washington, D.C. 20010  
(212)332-4282

ATTORNEYS FOR DEFENDANTS

Dated: New York, N.Y.  
November 21, 1974



**AFFIDAVIT OF NANCY STEARNS IN  
SUPPORT OF MOTION.**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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THE STATE OF NEW YORK,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action File No.
	:	74-CV-370
DANNY WHITE, et al.,	:	
	:	
Defendants.	:	

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AFFIDAVIT

STATE OF NEW YORK )  
                          )SS:  
COUNTY OF NEW YORK)

NANCY STEARNS, being duly sworn, deposes and says:

I am a member of the bar of this Court and one of the attorneys for defendants herein.

Defendants' response to the complaint filed herein is currently due on December 1, 1974.

This is an action brought by the State of New York against named and unnamed citizens of the Mohawk Nation who are residing in Ganienkeh, an area of land in Herkimer County between Eagle Bay and Big Moose, New York. The State of New York seeks a judgment quieting title, removing defendants' claim to the land.

On October 28, 1974, two shooting incidents occurred, allegedly involving Indians residing on the land in dispute herein. Two non-Indians were seriously injured. Those two incidents resulted in considerable tensions in neighboring communities.

As part of an effort to ensure that peace would be maintained in the area, the undersigned, along with co-counsel, Robert T. Coulter, have been at Ganienkeh (the land which is subject of the dispute herein) almost continuously, meeting with New York State

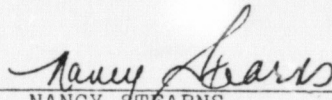
## Affidavit of Nancy Stearns in Support of Motion.

Police in negotiation sessions set up by the Community Relations Service of the Justice Department or meeting in other cities with other government officials in an effort to resolve the shooting incidents.

As a result, it has been impossible for either Mr. Coulter or myself to devote the time required to the responsive papers in this action.

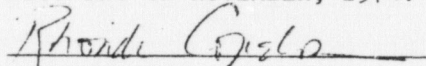
Defendants therefore request an additional two weeks in which to file their answer or otherwise move in the action herein.

Mr. Jeremiah Jochowitz has been notified by telephone this day of defendants' intentions to move for this extension of time.

  
NANCY STEARNS

SWORN TO BEFORE ME THIS

21st DAY OF NOVEMBER, 1974.

  
NOTARY PUBLIC

RHONDA COPELON ~~SCHENBASS~~  
NOTARY PUBLIC, State of New York  
No. 3523050  
Qualified in ~~West~~ County  
Expires March 30, 1975



## MOTION TO DISMISS.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----X

THE STATE OF NEW YORK, :

Plaintiff, :

v. : Civil Action File No. 74-CV-370

DANNY WHITE, et al., :

Defendants. :

-----X

Please take notice that on January 22, 1975 at 10 a.m., or as soon thereafter as counsel may be heard, Defendants will move at the United States District Court, for the Northern District of New York, Federal Building, Utica, New York, for an order dismissing this action on the grounds that:

a) A dispute between two nations, or the respective states of those nations, regarding the ownership or sovereignty over land is an international matter which may not be decided by the courts of one of those nations;

b) The validity of treaties entered into by the executive branch of the United States is a political question which is not appropriate for determination by the courts of the United States;

c) This action which raises the question of the ownership of or sovereignty over the land of Ganienkeh is in reality an action against the Mohawk Nation and the Six Nations Confederacy, and therefore is barred by the doctrine of sovereign immunity.

Respectfully submitted,

*Nancy Stearns*  
*Robert T. Coulter*

NANCY STEARNS  
c/o Center for Constitutional Rights  
853 Broadway  
New York, New York 10003  
(212) 674-3303

ROBERT T. COULTER  
3240 19th Street, N.W.  
Washington, D.C. 20010  
(202) 332-4282

**MEMORANDUM IN SUPPORT OF MOTION  
TO DISMISS.**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

----- :

THE STATE OF NEW YORK, :

Plaintiff, :

v. : Civil Action File No.

74-CV-370

DANNY WHITE, et al., :

Defendants. :

-----

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

STATEMENT OF FACTS

This is an action regarding a dispute between the State of New York and the Six Nations Confederacy (sometimes referred to as the Iroquois Confederacy) concerning the title to or sovereignty over certain land.

On September 11, 1974, the State of New York filed this action against 23 named and 19 unnamed Indian individuals contesting the ownership of 612 acres of land in the town of Webb in Herkimer County.<sup>\*/</sup> New York State claims title to the land, which it had purchased in 1973, from the Nature Conservancy, a private corporation. The state alleges that its chain of title can be traced back to a treaty made between New York State and one Joseph Brandt,

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<sup>\*/</sup> After the filing of this action, United States Marshals appeared at the land in question (Ganienkeh) to serve summons and complaints on the parties named as defendants by the State of New York. They were informed that the land was not New York territory but rather the territory of the Mohawk Nation and that they therefore could not enter. They were directed to contact Mr. Robert T. Coulter, attorney for the Indians.  
(fn. continues on next page)



## Memorandum in Support of Motion to Dismiss.

executed in 1797 in which Brandt claimed to relinquish all Mohawk lands to the state for the sum of \$1,000.00 plus expenses.<sup>\*/</sup> Prior to the 1797 treaty, the 612 acres as well as several million additional acres, was the undisputed territory of the Mohawk Nation and the Six Nations Confederacy. Their ownership of the land, called Ganienkeh, or Land of the Flint, was recognized in the Treaty of 1784, or the Treaty of Fort Stanwix, between the United States and the Six Nations Confederacy of which the Mohawks were but one nation.

The people who are currently residing on the land of Ganienkeh claim the right to live on their aboriginal lands. They assert, as members of the Six Nations Confederacy have consistently asserted, that the treaty of 1797 is invalid, not only because Joseph Brandt had no authority under the Great Law of the Six Nations, Gayanerakowa, to dispose of Indian land, but because the United States (which by law had to oversee and approve any treaties with the Indian Nations) knew that Brandt had no such authority and that only the governing body of the Six Nations could enter into treaties regarding the land.

New York State has come to this Court asking it to review the treaties in question, uphold the validity of the 1797 treaty, and remove any cloud from their claim of title to the land.

THE SIX NATIONS CONFEDERACY

The Six Nations Confederacy of which the Mohawk Nation is but a part, has existed in the land known today as New York State,

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(fn. continued from preceding page)

On September 30, 1974, all copies of the summons and complaint were served by the Marshals on Mr. Coulter in Washington, D.C. Defendants will not here address themselves to the questions of the validity of the service on Mr. Coulter or to whether the parties named in the complaint actually reside in Ganienkeh.

<sup>\*/</sup> In 1798, New York State allegedly patented the lands in question to a non-Indian, private citizen and the lands remained in private hands when New York repurchased them from the Nature Conservancy for the amount of \$783,000 in 1973.

## Memorandum in Support of Motion to Dismiss.

since the 1500's, if not earlier. <sup>\*/</sup> The Confederacy was originally made up of the Onondaga, Seneca, Mohawk, Cayuga and Oneida Nations, and was later joined by the Tuscaroras in 1722. The Six Nations had and still has a central governing body known as the Grand Council in which all of the Six Nations participate and which makes all decisions by the principle of unanimity. <sup>\*\*/</sup> The Grand Council, which performs the legislative, executive and judicial functions of government, continues today as the governing body of the Six Nations Confederacy.

OWNERSHIP OF LAND UNDER THE LAW OF THE SIX  
NATIONS.

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Unlike the customs and traditions of the United States, under the law and tradition of the Six Nations, "no individual could obtain absolute title to the land, as that was vested by the laws of the Iroquois in all the people." <sup>\*\*\*/</sup> See Morgan, supra, p. 326. Since no one individual owned the land of the Six Nations,

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<sup>\*/</sup> See Morgan, League of the Iroquois, 1851, facsimile edition, 1972, pp. 4-8.

<sup>\*\*/</sup> The Six Nations Confederacy remains today a classic model of the federal state which is "...a perpetual union of several sovereign states which has organs of its own and is involved with power, not only over the member states, but also over their citizens. The union is based, first on an international treaty of the member-states, and secondly, on a subsequently accepted constitution of the federal state. A federal state is said to be a real state side by side with its member states, because its organs have a direct power over the citizens of those member states." Lauterpacht, ed., Oppenheim's International Law, Vol. 1 Peace, 1958, §89 p. 175 hereinafter, Oppenheim.

<sup>\*\*\*/</sup> Individuals could, however, cultivate unoccupied parcels of land and could sell or bequeath the improvements on or crops from the land. See, Morgan, supra, p. 326.



## Memorandum in Support of Motion to Dismiss.

none could sell or otherwise dispose of the land. That could only be done by the Six Nations Confederacy.

A dispute involving the ownership of the Six Nations' land therefore was and continues to be a matter involving the Six Nations as a whole, and not individuals.

The Role and Position of the Six Nations Confederacy  
Regarding this Litigation.

On November 24, 1974, the Grand Council of the Six Nations authorized the following statement to be presented to this Court. <sup>\*</sup>

To: The United States District Court for the Northern District of New York.

The action of the State of New York v. Danny White, et al., (Ganienkeh), is in reality an action against the Mohawk Nation and the Six Nations Confederacy regarding the ownership of or sovereignty over the land of Ganienkeh. As such, it may not properly be decided by the courts of the United States, nor do the Mohawk Nation or the Six Nations Confederacy consent to be sued in United States courts.

The question of the ownership of or sovereignty over the land of Ganienkeh can only be decided in an international forum or by diplomatic negotiations between the United States and the Six Nations.

Therefore, the Six Nations Confederacy hereby formally objects to any assertion of jurisdiction by the United States District Court for the Northern District of New York over this matter.

Signed: Chief Gordon Peters  
Secretay, Six Nations,  
Under the Direction of  
The Grand Council of the  
Six Nations Confederacy  
held on November 24, 1974.

THIS ACTION REGARDING THE TITLE TO LAND IS IN REALITY  
AGAINST THE SIX NATIONS CONFEDERACY AND IT IS IMMUNE  
FROM SUIT UNDER THE DOCTRINE OF SOVEREIGN IMMUNITY.

A. An Action Regarding the Title to the Land Herein  
is Against the Six Nations Confederacy.

<sup>\*</sup>/ Defendants will limit the grounds for the Motion to Dismiss to those matters raised by the Grand Council above.

## Memorandum in Support of Motion to Dismiss.

Although the State of New York has styled this action regarding title to land against a number of individual Indian people, both named and unnamed, the real party in interest is the Six Nations Confederacy. The individuals now residing on the land are doing so under the authority and protection of the Six Nations Confederacy. This is evidenced by the letter of November 24, 1974 to this Court. Furthermore, under the law of the Six Nations the land in question is not held by individuals, but by the Six Nations as a whole. Therefore any dispute regarding the ownership of land claimed by the Six Nations must be had with the Six Nations and not with individuals residing on the land. For it is a fundamental principle of international law that "any action against the property of the sovereign is an action against such sovereign." The Cristina, Great Britain, House of Lords (1938), A.C. 485.

Thus, in order to litigate the question of the title to the land herein in United States courts, the State of New York must bring the Six Nations and not merely individual citizens before the court.

B. Under the Principles of Sovereign Immunity a Nation May Not be Sued Without its Consent.

Under the doctrine of sovereign immunity, however, the State of New York may not bring the Six Nations before this Court unless they agree to submit themselves to its jurisdiction. For,

...according to the rule par in parem non habet imperium - no State can claim jurisdiction over another. Therefore, although States can sue in foreign courts, they cannot as a rule be sued there unless they voluntarily submit to the jurisdiction of the court concerned. This rule applies not only to actions brought directly against foreign States, but also to indirect actions, as when, for instance, a suit in rem is brought against a vessel in the possession of a foreign State. \*/

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\*/ Or an indirect action as here, where an action is brought against citizens of the sovereign state in an attempt to evade the principles of sovereign immunity.



## Memorandum in Support of Motion to Dismiss.

As the Permanent Court of International Justice stated in 1923,

It is well established in international law that no state can, without its consent, be compelled to submit its disputes with other states either to mediation or to arbitration, or to any other kind of pacific settlement. \*/ Eastern Carelia, advisory opinion, series B, No. 5 at p. 27; quoted in Oppenheim, supra, Vol. II, §12, p. 22.

American courts have also recognized the basic principle that the United States cannot bring an unwilling foreign nation before its courts:

It is well a well established rule of international law that the public property of a foreign sovereign is immune from legal process without the consent of that sovereign. Loomis v. Rogers, 245 F.2d 941 (D.C. Cir., 1958), cert. denied, 69 S.Ct. 611.

Indeed, the Six Nations Confederacy has not agreed to submit itself to the jurisdiction of this Court. Rather, in the letter of November 24, 1974, they have invoked the principle of sovereign immunity and have objected to any assertion of jurisdiction by this Court.

The courts of the United States have often been compelled to dismiss actions regarding the property of a foreign sovereign when a claim of sovereign immunity was interposed by the defendant. See, for example, Sullivan v. State of Sao Paulo, 122 F.2d 355 (2nd Cir., 1941).

C. The Doctrine of Sovereign Immunity is Applicable to a Claim Against The Six Nations.

Indian Nations have long been recognized in international affairs as independent sovereignties. As early as the 1600's the Six Nations Confederacy (then Five Nations) entered into treaties

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\*/ Judicial settlement is obviously included within the concept of other kinds of pacific settlements. See, Oppenheim, supra, Vol. II §25ab - ag, pp. 42-87.

## Memorandum in Support of Motion to Dismiss.

with the Dutch and later the British. The United States government also entered into treaties with the Six Nations Confederacy.

The treaties concluded between the United States and the Six Nations, unlike treaties concluded in later times with other Indian Nations, reflect and recognize the fully sovereign character of the Six Nations.<sup>\*/</sup> The Six Nations were never conquered nor militarily subjugated by the United States. On the contrary, the treaties of 1784 and 1794 were sought by the United States in order to make peace with the Iroquois.

A well-known work by the United States Department of the Interior gives the following account:

2. Importance to union of peace negotiations with Iroquois. -

The treaty of peace between the United States and the Iroquois was considered of considerable importance to the Central Government. Washington, in 1783, made a personal trip to the lands of the Iroquois to familiarize himself with conditions. The negotiations of peace in 1784 were closely followed by Washington in Virginia and Jefferson in Paris, and such personalities as James Madison, James Monroe, Lafayette, and General Butler were present as negotiators or observers.

The Iroquois insisted on acting in their collective capacity and, though they had been harried by Sullivan's expedition, any effort to expel the hostile tribes of the Iroquois from their ancient lands or any attempt to break up the League into its several tribes, would have been attended by a prolonged frontier war which the new Union was not prepared to prosecute.

The controlling purpose of the Central Government was to make peace with the Iroquois and to drive a wedge

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<sup>\*/</sup> Amongst the subjects of treaties between the United States and the Six Nations Confederacy which indicate the international status of the Confederacy were war and peace, boundaries and the exchange of prisoners. See, Office of the Solicitor, United States Department of the Interior, Federal Indian Law, 1942, p. 39, (hereinafter, Federal Indian Law.) See, Treaty of Ft. Stanwix, supra, and Treaty of Konondawga, 7 Stat. See also, Article VII of the Treaty of Konondawga regarding the peaceful settlement of disputes, a subject which is typically the subject of treaties between or among nations. See for example Oppenheim, supra, Vol. II on Amicable Settlement of State Differences, 1952, pp. 3-131.



## Memorandum in Support of Motion to Dismiss.

between them and the western tribes - to separate the Iroquois from the subjugated western tribes and to undermine the influence of the League over them.

\* \* \*

Though under the Articles of Confederation there was a question of whether the Confederated Government was invading the rights of the State of New York relative to the Iroquois, the necessity of the times and the importance of these Indians in relation to all of the states made it imperative that the Central Government take definite action. Federal Indian Law, supra, pp. 418-419.

As recently as November 22, 1974, the United States Commissioner of Indian Affairs addressed a formal complaint to the Grand Council of the Six Nations Confederacy under the Treaty of Konongdaigua, supra. Copy of letter is annexed hereto as Appendix A.

The Judiciary of the United States as well as the Executive has also recognized the Indian Nations as sovereigns. The Supreme Court in Worcester v. Georgia, 6 Pet. 515, 559, 560 -561, (1832) described the status of the Indian Nations as follows:

The Indian Nations had always been considered as distinct, independent political communities, retaining their original natural rights....[T]he settled doctrine of the law of Nations is that a weaker power does not surrender its independence - its right to self-government, by associating with a stronger and taking its protection. A weak state in order to provide for its safety, may place itself under the protection of one more powerful without stripping itself of the right of government and ceasing to a state.

It is settled under United States law that an Indian Nation is immune from suit except when expressly authorized by a specific act of Congress. Thebo v. Choctaw Tribe of Indians, 66 Fed. 372 (8th Cir., 1895); United States v. U.S. Fidelity & Guaranty Co., 106 F.2d 804 (10th Cir., 1939). No such act has been passed, and, of course, any such act would be contrary to international law.

Nor do Acts of Congress regarding the Indian Nations alter their entitlement to sovereign immunity. For under international law "...The matter of recognition is not a function which inter-

## Memorandum in Support of Motion to Dismiss.

national law can in principle leave to be decided by purely political considerations on the part of the third state." Oppenheim, Vol. I, §73c, p. 131. Since sovereignty, and therefore sovereign immunity is a basic element of nationhood (Oppenheim, supra, Vol. I, §64, p. 118), one nation cannot arbitrarily refuse the protections of sovereign immunity to another. This too has been recognized by the courts of the United States, as when the United States Court of Appeals for the Second Circuit noted in Sullivan v. State of Sao Paolo, supra, 122 F.2d at 359, "...the failure of our own government to maintain diplomatic relations with them" does not deprive states of their status as sovereigns. The New York Court of Appeals reached the same conclusion twenty years before, stating:

Whether or not a government exists clothed with the power to enforce its authority within its own territory, obeyed by the people over whom it rules, capable of performing the duties and fulfilling the obligations of an independent power, able to enforce its claims by military force, is a fact not a theory. For it recognition does not create the state although it may be desirable. Wulfsohn v. Russian Republic, 234 N.Y. 372, 375 (1923).

The Second Circuit has held even further,

... the doctrine [of sovereign immunity] is not confined to powers that are sovereign in the full sense of the juridical theory, but naturally is extended to those that, in actual administration, originate and change at their will the law of contract and property, from which persons within the jurisdiction derive their rights. Sullivan v. State of Sao Paolo, supra, 122 F.2d at 359.

Here where the defendants derive their claim of right to live on, cultivate and improve the land in question from the claim of ownership by the Six Nations Confederacy which historically holds all Six Nations land in common, the sovereign plainly has the powers referred to by court in Sullivan.

In sum, this Court can only conclude that this action regarding the ownership of, or sovereignty over the land in question is a) an action against the Six Nations Confederacy, and b) that



## Memorandum in Support of Motion to Dismiss.

the Six Nations Confederacy is immune from suit. Therefore this action must be dismissed.

II. THE ISSUES PRESENTED ARE POLITICAL QUESTIONS  
WHICH MAY NOT BE PROPERLY DECIDED BY THIS COURT.

The issues presented by this action are inappropriate for decision by this Court for the additional reason that the critical matters to be determined are "political questions" which the United States courts are not free nor competent to decide. If the land in question is Six Nations territory and not United States territory, then the named defendants are entitled to reside there. If the Six Nations is a sovereign state, then this action may not be maintained against it. The validity of the treaty of 1797 by which the land was purportedly made part of the United States and the international status of the Six Nations and the Mohawk Nation are "political questions" under United States law and therefore not capable of independent and impartial determination by this Court. Thus, in addition to the absolute right of the Six Nations over its own territory, the Six Nations refuse to be bound by any decision of the United States courts because no such decision could be fairly nor impartially made under United States law.

The status of Indian Nations has been recognized as a political question beyond the power of the courts to determine/ since independently, the earliest days of the United States. Chief Justice John Marshall wrote:

They [the Cherokee Nation] have been uniformly treated as a state from the settlement of our country. The numerous treaties made with them by the United States recognize them as a people capable of maintaining the relations of peace and war, of being responsible in their political character for any violation of their engagements, or for any aggression committed on the citizens of the United States by any individual of their community. Laws have been enacted in the spirit of these treaties. The acts of our government plainly recognize the Cherokee nation as a state, and the courts are bound by those acts.

Cherokee Nation v. Georgia, 5 Pet. 1, 16  
(1831)

## Memorandum in Support of Motion to Dismiss.

More recently Justice Brennan in Baker v. Carr, 369 U.S. 186, 215-217 (1962) recognized the question of the status of Indian Nations as one of the categories of political questions. Also listed as political questions were the following issues: the validity of treaties under international law and foreign constitutional law; the validity of federal statutes under international law; the international boundaries of the United States; the territorial sovereignty of foreign states; the existence of foreign insurgents, governments (de facto or de jure) and states; as well as a host of other issues. Baker v. Carr, 369 U.S. 186, 211-226 (1962).

As to the validity of treaties there is no doubt that the United States courts have no competence or power to make an independent determination. The Office of the Solicitor of the Department of the Interior has written:

Generally speaking the incidents attaching to a treaty with a foreign power have been held applicable to Indian Treaties. Thus, in accordance with the general rule applicable to foreign treaties, the courts will not go behind a treaty which has been ratified to inquire whether or not an Indian tribe was properly represented by its head men; nor determine whether or <sup>not</sup> a treaty has been procured by duress or fraud, and declare it inoperative for that reason. [Citing United States v. New York Indians, 173 U.S. 464 (1899); United States v. Old Settlers, 148 U.S. 427, 466 (1893)] Federal Indian Law, p. 34.

The work goes on to quote the following language of the Supreme Court:

. . . the treaty, after executed and ratified by the proper authorities of the government, becomes the supreme law of the land, and the courts can no more go behind it for the purpose of annulling its effect and operation, than they can behind an act of Congress. Fellows v. Blacksmith, 60 U.S. 366, 372 (1856), quoted at Federal Indian Law, p. 34.

This rule that the courts will not question the validity of a treaty which has been executed and ratified has been followed generally and has been particularly applied to treaties concluded with Indians. See Scharpf, Judicial Review and the Political Question: A Functional Analysis, 75 Yale L.J. 517, 545 (1966).



## Memorandum in Support of Motion to Dismiss.

Even if this case did not turn on the validity of a treaty it is clear that the issues of sovereignty over land and international boundaries are political questions which are inappropriate for decision by the United States courts. See, Wright, Federal Courts, p. 45-46 (1970).

The position of the United States courts is nowhere more clearly stated than by Chief Justice John Marshall:

In a controversy between two nations concerning national boundary, it is scarcely possible that the courts of either should refuse to abide by the measure adopted by its own government. There being no common tribunal to decide between them, each determines for itself on its own rights, and if they cannot adjust their differences peaceably, the right remains with the strongest. The judiciary is not that department of the government to which the assertion of its interests against foreign powers it confided; and its duty commonly is to decide upon individual rights, according to those principles which the political departments of the nation have established. If the course of the nation has been a plain one, its courts would hesitate to pronounce it erroneous. Foster v. Neilson, 2 Pet. 253, 307 (1829).

A noted German legal scholar who has studied the "political question doctrine" in United States law has written the following:

The reason which the Court gave in a territorial boundaries case for its reluctance to apply international law against the American government seems to have more general relevance:

A question of disputed boundary between two sovereign independent nations, is, indeed, much more properly a subject for diplomatic discussion, and of treaty, than of judicial investigation. [Citing De Le Croix v. Chamberlain, 25 U.S. 599, 600 (1827)].

The international order has its own processes for the settlement of disputes between nations, and in these processes the American position must be defined, presented and defended by the political departments of the government.

\* \* \*

In such a situation, the international conflict could not be resolved before a domestic court, if only because the foreign party to the dispute is not subject to its jurisdiction. As the Court pointed out as early as 1796:

If we are to declare whether Great Britain or the United States have violated a treaty we ought to have some way of bringing the parties before us. [Citing Ware v. Hylton, 3 U.S. 199, 261 (1796)].

## Memorandum in Support of Motion to Dismiss.

If the ultimate determination of the international dispute must be left to the processes of settlement provided by the international order, then the Court's opinion would be provisional, rather than final, with respect to the international issue in dispute, and it might prejudice the American position for the formulation and presentation of which the political departments must assume full responsibility. As an unfailing support for the rightness of American claims (which might be tactically motivated and which might change) would jeopardize the integrity of the judicial process, the political question doctrine is a legitimate means for the Court to delimit its responsibility in international conflicts to which the United States is a party. (footnotes omitted) Scharpf, *Judicial Review and the Political Question: A Functional Analysis*, 75 *Yale L.J.* 517, 575-6 (1967).

Thus it is clear, from the standpoint of international law and from the standpoint of the Six Nations that no fair and independent decision may be had in the United States courts, and it is therefore not appropriate for further proceedings to be entertained in this Court. This does not mean the dispute regarding the land in question herein cannot be peacefully resolved. As Scharpf noted above, there are many established mechanisms for resolving land disputes between nations, such as negotiation, conciliation, arbitration, judicial settlement by international courts or a combination of the above. See, Oppenheim, *supra*, Vol. II, pp. 3-120. Only one method is precluded - decision by the courts of one of the two disputing nations.

CONCLUSION

For all the foregoing reasons defendants urge that this case be dismissed.

Respectfully submitted,

*Robert T. Coulter*

*Nancy Stearns*

ROBERT T. COULTER  
3240 19th Street, N.W.  
Washington, D.C. 20010

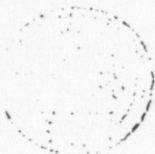
NANCY STEARNS  
c/o Center For Constitutional Rights  
853 Broadway  
New York, N.Y. 10003

Attorneys for Defendants

Dated: New York, N.Y.  
December 13, 1974



Appendix A — Letter, dated 11-22-74  
annexed to Memorandum.



11-22-74

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
WASHINGTON, D. C. 20245

NOV 22 1974

Chief Leon Shenandoah  
R.D. 1  
Nedrow, New York 13120

To the Chiefs of the Six Nations:

I have been informed through the Office of the President that two United States citizens, April Madigan and Stephen Drake, were wounded by gunfire on October 28, 1974, which allegedly came from the Indian encampment known as Ganienkeh, near Eagle Bay, New York. According to reports, the two individuals in question were wounded in separate incidents while traveling on Big Moose Road near the settlement.

Article VII of the Treaty of Canandaigua, 7 Stat. 44 (November 11, 1794) between the U.S. and the Six Nations provides that no private revenge or retaliation shall take place for injuries done by individuals of the Six Nations to citizens of the United States, or for injuries done by citizens of the United States to individuals of the Six Nations. Instead, the treaty requires that the party injured shall make a complaint to the other party. The article states that a complaint by any of the Six Nations shall be made to the President of the United States, or to a person appointed by the President. For injuries sustained by non-Indians, complaint is to be made to the Chiefs of the Six Nations. Complaint is hereby made by the United States that individuals of the Six Nations allegedly have wounded citizens of the United States as stated above.

The treaty also specifies that after a member of one party to the treaty has been injured by a member of the other party, such prudent measures shall then be pursued as shall be necessary to preserve our peace and friendship unbroken. This manner of maintaining the peace was, according to Article VII, to be used "... until Congress shall make other equitable provision for the purpose." Congress, in the year 1948, made such a



Save Energy and You Serve America!

Appendix A — Letter, dated 11-22-74  
annexed to Memorandum.

provision for the purpose of dealing with crimes committed on Indian reservations in New York by enacting 25 U.S.C. §232 which confers criminal jurisdiction on the State of New York.

By its terms that statute is applicable to crimes committed within reservations in the State of New York. Ganienkeh is not recognized by the Federal Government as an Indian reservation, although such a claim has been made by the members of the Six Nations residing thereon. The status of the land and the validity of the claim by the Six Nations are issues presently before the United States District Court for the Northern District of New York.

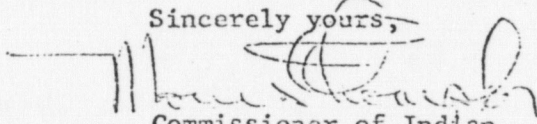
However, the treaty provides that both parties shall pursue prudent measures to preserve their peace and friendship. I am of the opinion that prudent and necessary measures must be taken. Those measures, I would expect, should be:

That the State of New York would proceed to investigate the shooting incidents with the participation and cooperation of observers or commissioners appointed by the Six Nations; and

That all persons, including members of the Six Nations, shall be afforded all rights provided by the Constitution and laws of the United States and the constitution and laws of the State of New York.

The Bureau will endeavor to monitor the progress of the investigation and I would hope that the parties will work together towards resolution of this conflict.

Sincerely yours,

  
Commissioner of Indian  
Affairs



## MOTION TO INTERVENE.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

---

STATE OF NEW YORK,

Plaintiff,

vs.

DANNY WHITE, et al.,

Defendants.

Civil Action  
No. 74-OV370

DOUGLAS L. BENNETT, BONNIE L. BENNETT  
AND BIG MOOSE PROPERTY OWNERS  
ASSOCIATION,

NOTICE

Applicants for  
Intervention

---

S I R S:

PLEASE TAKE NOTICE that the undersigned will bring on the motion of DOUGLAS L. BENNETT, BONNIE L. BENNETT and the BIG MOOSE PROPERTY OWNERS ASSOCIATION, for leave to intervene in this action for a hearing before the United States District Court, Northern District of New York at the Federal Court Building in the City of Syracuse, New York on the 13th day of January, 1975 at 10:00 a.m. or as soon thereafter as counsel can be heard.

*Hancock, Estabrook, Ryan, Shove & Hust*  
HANCOCK, ESTABROOK, RYAN, SHOVE & HUST  
Attorneys for Interveners  
Office and P.O. Address  
One Mony Plaza  
Syracuse, New York 13202  
(315) 471-3151

TO: Hon. Louis J. Lefkowitz  
Attorney General  
State of New York  
Office and P.O. Address  
The Capitol  
Albany, New York

## Motion to Intervene.

To: Ms. Nancy Stearns  
Attorney for Defendants  
Office and P. O. Address  
c/o Center for Constitutional Rights  
850 Broadway  
New York, New York 10003

Robert T. Coulter, Esquire  
Attorney for Defendants  
Office and P. O. Address  
3240 19th Street, N.W.  
Washington, D.C. 20010



## MOTION TO INTERVENE AS PLAINTIFFS.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK,	:	
	:	
Plaintiff,	:	Civil Action
	:	No. 74-OV370
-vs-	:	
DANNY WHITE, et al.,	:	
	:	
Defendants.	:	MOTION TO INTERVENE
	:	AS PLAINTIFFS
DOUGLAS L. BENNETT, BONNIE L. BENNETT	:	
AND BIG MOOSE PROPERTY OWNERS	:	
ASSOCIATION,	:	
	:	
Applicants for	:	
Intervention	:	

The above-named applicants move pursuant to Rule 24(a) (2) for leave to intervene as plaintiffs in this action in order to assert the claims set forth in their proposed complaint, of which a copy is hereto attached, on the ground that the applicants claim an interest relating to the property which is the subject of the original action and that they are so situated that the disposition of the action may as a practical matter impair or impede their ability to protect that interest unless the interests of applicants are adequately represented by existing parties.

*Hancock, Estabrook, Ryan, Shove & Hust*  
 HANCOCK, ESTABROOK, RYAN, SHOVE & HUST  
 Attorneys for Applicants for Intervention  
 Office and P. O. Address  
 One Mony Plaza  
 Syracuse, New York 13202  
 (315) 471-3151

## Motion to Intervene as Plaintiffs.

TO: Ms. Nancy Stearns  
Attorney for Defendants  
Office and P. O. Address  
c/o Center for Constitutional Rights  
850 Broadway  
New York, New York 10003

Robert T. Coulter, Esquire  
Attorney for Defendants  
Office and P. O. Address  
3240 19th Street, N.W.  
Washington, D.C. 20010

Hon. Louis J. Lefkowitz  
Attorney General  
State of New York  
Office and P. O. Address  
The Capitol  
Albany, New York



## INTERVENERS' COMPLAINT.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK,	:	
Plaintiff,	:	
-vs-	:	INTERVENERS'
	:	<u>COMPLAINT</u>
DANNY WHITE, et al.,	:	
Defendants.	:	
DOUGLAS L. BENNETT, BONNIE L. BENNETT	:	
AND BIG MOOSE PROPERTY OWNERS	:	
ASSOCIATION,	:	
Applicants for	:	
Intervention	:	

The above-named plaintiff-interveners allege as follows:

1. Plaintiff-interveners Douglas L. Bennett, Bonnie L. Bennett and Big Moose Property Owners Association, admit and re-plead the allegations contained in paragraphs numbered 1, 3, 4, 5, 6, 7, 8, 9, 11, 13 and 28 of the original complaint and so much of paragraph 2 as provides "defendants are in illegal occupation of the hereinafter described premises" with the same force and effect as if at length set forth herein.
2. Plaintiff-interveners state that they do not possess sufficient knowledge or information as to be able to form a belief as to the balance of the allegations in said complaint contained.
3. At all times hereinafter mentioned plaintiff-interveners Douglas Bennett and Bonnie L. Bennett were and now are residents

## Intervenors' Complaint.

of the Town of Webb, Herkimer County, State of New York and at all times since prior to May 13, 1974 have been and now are the owners of certain premises located within Township 8, John Brown's Tract, upon which they have operated a certain hotel known as the Big Moose Inn. At all times hereinafter mentioned, Big Moose Property Owners Association was and now is a not-for-profit corporation of the State of New York with a membership in excess of 100 members, all of whom are property owners of the Town of Webb, Herkimer County, State of New York.

4. Heretofore and on or about August 7, 1973 the State of New York, the plaintiff in the original complaint, purchased certain premises also situate in Township 8, John Brown's Tract, Town of Webb, Herkimer County and State of New York, commonly known, and hereinafter referred to, as the Moss Lake Camp property, containing approximately 613 acres of land. The said State of New York is still the owner in fee simple absolute of the same. These premises are situated on both sides of County Highway #1, Herkimer County, leading from the Hamlet of Eagle Bay to the Hamlet of Big Moose, and are approximately three miles south of the premises owned and occupied by plaintiff-intervenors Douglas L. Bennett and Bonnie L. Bennett and, on an average, some two or three miles from the premises owned and occupied by the members of the plaintiff Big Moose Property Owners Association, whose direct route of access to their properties is over said County Highway #1.



## Interveners' Complaint.

5. The premises owned by the plaintiff-interveners and the Moss Lake Camp property owned by the State of New York are all derived from a common title and prior to January 16, 1896 were all owned by William Seward Webb and Eliza Osgood Webb, his wife, and/or Ne-ha-sa-ne Park Association.

6. On January 16, 1896 said William Seward Webb and Eliza Osgood Webb, his wife, and Ne-ha-sa-ne Park Association as parties of the first part conveyed various lands, but not including the premises owned by plaintiff-interveners nor the Moss Lake Camp property, to the State of New York as party of the second part. The deed therefor provided that the parties thereto, i.e. William Seward Webb and Eliza Osgood Webb, Ne-ha-sa-ne Park Association and the State of New York, their heirs, distributees, successors and assigns and all other persons who might come into ownership of any of the balance of the lands then owned by said William Seward Webb, Eliza Osgood Webb and/or Ne-ha-sa-ne Park Association would be bound by the following restrictions contained in said deed, which restrictions would be covenants perpetually running with the land and would apply to all of the said lands then owned by said William Seward Webb and Eliza Osgood Webb and/or the Ne-ha-sa-ne Park Association which might thereafter be sold or transferred by them:

"First: The said William Seward Webb and the Ne-ha-sa-ne Park Association for a valuable consideration to them duly paid for themselves, their heirs and assigns jointly and severally covenant and agree to and with the party of the second part, its successors and assigns that none of the remaining lands in said Township eight (8), John Brown's Tract, belonging to the parties of the first part, or either of them, which have not been heretofore contracted by them to be sold, shall be used or sold for commercial

## Interveners' Complaint.

agricultural, manufacturing or other purposes except as mentioned in said Thomson contracts, but the same shall be used and sold exclusively for permanent forestry, hotel, camp and cottage purposes and all deeds of the same from the said parties of the first part or either of them, their heirs, successors or assigns shall contain a clause as to said remaining lands in said Township eight (8) binding the purchaser thereof, his heirs and assigns to a perpetual use of said lands for permanent forestry, hotel, camp and cottage purposes, it being understood and agreed that the parties with whom contracts are now outstanding for the sale of lands in said Township Eight (8) are John B. Ehrehart covering all that part thereof situate west of the railway of the Mohawk and Malone Railway Company in or about the centre of the west line of the Township; Dwight B. Sperry covering one hundred five (105) acres, five acres thereof situate near the Big Moose Station so-called and the remaining one hundred (100) acres near Eagle Bay adjoining the Fulton Chain allotment; Mary Ann Powers lots one (1) and two (2) of the Fulton Chain allotment and Mary Sprague, ten (10) acres near lot twenty eight (28) Third Lake of the Fulton Chain Allotment.

It is also for a valuable consideration jointly and severally agreed by the said Webb and the Ne-ha-sa-ne Park Association of the first part, their heirs, successors and assigns that they or either of them will not sell to any individual or corporation any lake or substantially the whole of the land under water and immediately surrounding a lake in any of the portions in said Township Eight (8) retained by them, but that such remaining lands in said Township eight (8) shall be sold by them at such times as they may elect in the same manner and for the same purposes as lands surrounding the Fulton Chain of Lakes have heretofore or are now being sold by said Webb of the first part. The intent of this agreement being that the parties of the first part, their heirs or assigns will not dispose of their lands in said Township eight (8) so as to afford any individual or club or association of individuals or any corporation or corporations an opportunity to control the exclusive use of any lake in said Township eight (8) for a private preserve or the exclusive hunting or fishing privileges of any land beyond their individual camp site or hotel sites, it being agreed and understood that no camp sites sold shall exceed twenty five acres in amount and no



## Interveners' Complaint.

hotel site shall exceed two hundred and fifty acres in amount. It is further promised, understood and agreed that the public shall have the unrestricted right to hunt and fish upon all the lands in said Township eight (8) which have not heretofore been sold or which in the future may not be sold for camp sites or hotel sites. It being expressly agreed and understood that this hunting and fishing shall not apply to any camp or hotel sites that the parties of the first part, or either of them, their heirs or assigns have heretofore sold or hereafter may sell or convey.

Second: The party of the second part covenants and agrees to and with the parties of the first part and this deed is accepted upon the express condition that the parties of the first part, their heirs and assigns do not release or relinquish the right to use any present established ways, highways, trails or ways of communication by land or by water from or to any of their lands in said Township 8. It being expressly agreed and understood that the parties of the first part, their heirs and assigns shall have the same highway rights of every kind and nature or means of communication upon, across or over said Township 8 the same as if this conveyance had not been made or executed.

Third: The parties of the first part for themselves, their heirs and assigns covenant and agree to and with the party of the second part that all trails and ways of communication of whatsoever kind or nature whether by land or by water across and over the lands in said Township eight (8) belonging to the parties of the first part or either of them not herein conveyed or heretofore contracted to be conveyed shall forever remain open and free to the People of the State of New York."

7. Said restrictions and covenants apply to the lands now owned by the plaintiff-interveners and to the Moss Lake Camp property and inure to the benefit of each and are equally the responsibility of each.

8. No reference to these restrictions and covenants appears in the original complaint.

## Intervenors' Complaint.

9. Since on or about May 13, 1974, the defendants in the original action, their invitees, followers, supporters, successors and assigns, have seized and occupied the Moss Lake Camp property and are using the same in violation of the restrictions and covenants hereinbefore stated, and the parties to the original complaint have otherwise failed to comply with the said restrictions and covenants and to keep open to plaintiff-intervenors and to the People of the State of New York access over and across said lands, access to the Moss Lake entirely contained upon the Moss Lake Camp property and plaintiff-intervenors and the People of the State of New York have been and are now being denied such access and the hunting and fishing rights thereon and thereto, all to the loss and damage of the plaintiff-intervenors.

10. By reason of the facts aforesaid the plaintiff-intervenors are suffering irreparable damage as well as pecuniary damage in the sum of \$5,000,000 which said damages continue.

## FOR A SECOND, SEPARATE AND DISTINCT CAUSE OF ACTION

Plaintiffs repeat and reallege the allegations contained in paragraphs numbered 1 through 9 aforesaid with the same force and effect as if at length set forth herein.

11. Upon information and belief defendants Danny White et al., their invitees, followers, supporters, successors and assigns have from time to time since May 13, 1974 claimed, and at the present time, claim ownership to these and to additional lands,



whether public or private, within and without the Adirondack region, many of which lands are also subject to the restrictions and the covenants contained in the aforesaid deed from Webb et als. to the State of New York dated January 16, 1896.

12. Further, upon information and belief, the aforesaid defendants, their invitees, followers, supporters, successors and assigns have also, since May 13, 1974, seized and occupied and are using additional adjacent lands owned by the State of New York including the premises known as Bubb Lake and Sis Lake which lands are also subject to the said restrictions and covenants in the deed from Webb et als. to the State of New York dated January 16, 1896 and have denied to plaintiff-intervenors and the People of the State of New York access over and across said lands, access to the Moss Lake entirely contained upon the Moss Lake Camp property and the hunting and fishing rights thereon and thereto.

13. The aforesaid claims, the aforesaid seizure and the aforesaid use and occupation of the premises known as Bubb Lake and Sis Lake and the denial of access thereto are all in violation of the restrictions and covenants contained in the aforesaid Webb deed and are all in violation of the rights of the plaintiff-intervenors.

14. By reason of the facts aforesaid plaintiff-intervenors are suffering irreparable damage, which damage continues.

FOR A THIRD, SEPARATE AND DISTINCT CAUSE OF ACTION

## Interveners' Complaint.

15. Paragraph numbered 4 of the original complaint re-pleaded above alleges that the original action is brought pursuant to 28 U.S.C. 2201 and 2202 and Fed. Rules Civ. Proc. Rule 65, U.S.C. to remove a cloud on the title of the lands owned by the plaintiff to the original complaint and thereafter described as the lands comprising the Moss Lake Camp property of some 613 acres more or less.

16. Upon information and belief, the defendants Danny White et al., their invitees, followers, supporters, successors and assigns are claiming title to some 9 million acres of land contained within the States of New York and Vermont which include the lands of the plaintiff in the original complaint as aforesaid, as well as the lands of the plaintiff-interveners which claim casts a cloud upon the title of the lands owned by the plaintiff-interveners.

17. The second prayer for relief contained in the original complaint provides: "Grant plaintiff a judgment removing, as a cloud on plaintiff's title, the effects of defendants' contention that they are rightfully in possession of the hereinbefore described premises and declaring that plaintiff is the owner in fee of said premises and resulting possession of the premises to plaintiff and that the defendants be barred from re-entering possession of the same."

3



## Interveners' Complaint.

18. Upon information and belief, the determination of this Court as to the contentions of the parties to the original complaint could cast a cloud upon the title of the lands held by the plaintiff-interveners, could remove any cloud from the titles of the lands held by the plaintiff-interveners or could even directly affect the titles of the plaintiff-interveners to the properties owned by them.

19. By reason of the facts aforesaid, plaintiff-interveners have an interest in the subject of this action, have property and personal rights which will be affected by any determination in this action and plaintiff-interveners are now suffering irreparable damage as well as substantial monetary damages which damages continue.

FOR A FOURTH, SEPARATE AND DISTINCT CAUSE OF ACTION

Plaintiff-interveners repeat and reallege the allegations contained in paragraphs numbered 1, 2, 3, 4, 5 and 9 aforesaid with the same force and effect as if at length set forth herein.

20. Upon information and belief the defendants Danny White et al., their invitees, followers, supporters, successors and assigns assert a claim of title to the Moss Lake Camp property and some 9 million additional acres of land contained within the

## Intervenors' Complaint.

States of New York and Vermont together with the right to occupy said lands by reason of some purported invalidity to the Treaty between the Mohawk Nation and the State of New York dated March 29, 1797.

21. Plaintiff-intervenors deny that said defendants, their invitees, followers, supporters, successors and assigns have any valid title or color of title to said lands nor the right to occupy the same by reason of any defect or invalidity to the Treaty of 1797 or otherwise.

22. Even if it were held that the Treaty of 1797 were invalid, any claim of title to the lands in question or the right to occupy the same could only be asserted by authority of the Mohawk Nation and the defendants Danny White et al., their invitees, followers, supporters, successors and assigns have never been authorized by the Mohawk Nation to seize or to occupy or to lay claim of title to said lands.

23. Said defendants, their invitees, followers, supporters, successors and assigns have no right in said lands except as they may be members of the People of the State of New York to whom certain rights are granted under the rules and regulations of the Department of Environmental Conservation.

WHEREFORE, plaintiff-intervenors respectfully demand that judgment be granted:



## Interveners' Complaint.

1. Granting plaintiff-interveners the same relief sought by the plaintiff State of New York in its prayer for relief in the original complaint.

2. Granting a temporary injunction enjoining the defendants Danny White et al. and all other persons similarly situated and/or their successors and assigns from interfering with the right of the intervening plaintiffs arising under the restrictions and covenants running with the lands stated in the aforesaid deed of William Seward Webb and Eliza Osgood Webb and Ne-ha-sa-ne Park Association dated January 16, 1896 or from otherwise occupying, possessing, residing upon or making claim of title to the premises of plaintiff-interveners or premises of the State of New York pending the determination of this action.

3. Granting a permanent injunction enjoining the defendants Danny White et al. and all other persons similarly situated and/or their successors and assigns from interfering with the right of the intervening plaintiffs arising under the restrictions and covenants running with the lands stated in the aforesaid deed of William Seward Webb and Eliza Osgood Webb and Ne-ha-sa-ne Park Association dated January 16, 1896 or from otherwise occupying, possessing, residing upon or making claim of title to the premises of plaintiff-interveners or premises of the State of New York.

## Interveners' Complaint.

4. Directing that a writ of mandamus issue directing the officers, agents, servants and employees of the original plaintiff to remove the defendants Danny White et al. and all persons similarly situate and their successors and assigns from the said premises pending the determination of this action.

5. Granting judgment against the defendants Danny White et al. in the sum of \$5,000,000 with interest thereon.

6. Granting to plaintiff-interveners the costs and disbursements of this action.

7. Granting plaintiff-interveners such other and further relief as to the Court seems just and proper.

HANCOCK, ESTABROOK, RYAN, SHOVE & HUST  
Attorneys for Plaintiff-Interveners  
Office and P. O. Address  
One Mony Plaza  
Syracuse, New York 13202  
(315) 471-3151



## ORDER TO SHOW CAUSE.

At a Term of the United States District Court, Northern District of New York, held at the Federal Court House in *Auburn*, New York on the 8th day of January, 1975.

PRESENT: HON. EDMUND PORT  
UNITED STATES DISTRICT COURT JUSTICE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----  
THE STATE OF NEW YORK,

Plaintiff,

-against-

DANNY WHITE, PAUL WHITE, JR., PAUL WHITE and NORMA WHITE, his wife, LORRAINE MONTGOMERY, THOMAS DELARANDE and LORRAINE DELARANDE, his wife, JOHN HEMLOCK, ALLEN HEMLOCK, DIANE HEMLOCK, EARL FRANCIS CROSS, CHRISTOPHER HEMLOCK, ANGUS DEER, DAVID DEER, DAVID DEERHOUSE, WARREN DEER, JIMMY DEER, PAUL WILLIAMS, ALEX AKWENZIE, TOM COOK, DOUGLAS PINE, ANNIE JOCK, "JOHN" GAMBLE, first name being fictitious, real first name not being known to plaintiff, person intended being in possession of State land in Town of Webb, Herkimer County; "JOHN DOE", "RICHARD ROE", "RITA ROE", "GERALD GOE", "JANE COE", "SAM FOE", "GLADYS HOE", "AL JOE", "JANE DOE", "SUE WOE", "PETER MOE", "PHILIP SOE", "CAROL ZOE", "DONALD POE", "FRED MOE", "BOB BOE", "WARREN KOE", "BILL VOE", and "JOE WOE", true names of parties being unknown, parties intended being in possession of State land in the Town of Webb, Herkimer County,

Defendants.

TOWN OF WEBB, a municipal corporation in Herkimer County, New York,

Intervening Plaintiff.

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ORDER TO SHOW  
CAUSE

Civil Action  
File No.  
74-CV-370

## Order to Show Cause.

On the annexed affidavit of William J. Foley, attorney for the Town of Webb, the applicant for intervention herein, duly verified on the 8th day of January, 1975, and upon the proposed complaint of the Town of Webb dated January 8th, 1975 and upon all prior pleadings and proceedings herein,

Let the State of New York and Danny White, et al., show cause before Hon. Edmund Port, United States District Court Judge, at the Federal Court House, Syracuse, New York on the 13th day of January, 1975 at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why an Order should not be made granting the motion of the Town of Webb to intervene in the proceeding of the State of New York vs. Danny White, et al., upon the grounds that:

1. The applicant claims an interest relating to the property which is the subject of the action and it is so situated that the disposition of the action may, as a practical matter, impair its ability to protect that interest and that the applicant's interest is not adequately represented by the existing parties; and

2. That the applicant's claim and the main action have a question of law or fact in common; and

also granting such other and further relief as to the Court may seem just and proper.

Let service of a copy of this Order and motion papers upon which the same is founded, if served upon the State of New York



## Order to Show Cause.

at the offices of the Attorney General, Louis Lefkowitz, Albany, New York, and upon Nancy Sterns and Robert Coulter, the attorneys of Danny White, et al., either personally or by certified mail on or before January 8, 1975 be deemed good and sufficient service herein.

Dated: January 8, 1975.

Edmund J. Port  
United States District Court Judge  
Northern District of New York

AFFIDAVIT OF WILLIAM J. FOLEY IN SUPPORT  
OF MOTION.  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----

THE STATE OF NEW YORK,

Plaintiff,

-against-

CIVIL ACTION  
FILE NO. 74-CV-370

DANNY WHITE, PAUL WHITE, JR., PAUL  
WHITE and NORMA WHITE, et al.,

Defendants.

THE TOWN OF WEBB, a Municipal Corporation,      AFFIDAVIT  
County of Herkimer, State of New York,

Applicant for  
Intervention

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STATE OF NEW YORK )  
                          ) SS.  
COUNTY OF ONEIDA )

WILLIAM J. FOLEY, being duly sworn, deposes and says:

1. That he is a duly authorized and practicing attorney,  
and a member of the law firm of Foley & Frye, with offices at  
Utica in Oneida County, State of New York, and Old Forge, in  
Herkimer County, State of New York.

2. That he is and has been for in excess of fifteen  
(15) years the attorney for the Town of Webb, the applicant  
for intervention.

3. Deponent attended the public schools in the Town



## Affidavit of William J. Foley in Support of Motion.

of Webb, and has maintained a seasonal residence in the Town of Webb for in excess of thirty (30) years, and is personally conversant with the facts and circumstances set forth in this affidavit.

4. This affidavit is in support of the application of the Town of Webb to intervene as a plaintiff in the above-entitled action, which action was brought by the Attorney General of the State of New York to remove a cloud on the title to certain real property owned by the plaintiff in the Town of Webb, which real property is hereinafter referred to as Moss Lake, and to secure possession by the State of New York of said Moss Lake, which has been occupied without authorization by the defendants.

5. This affidavit is in support of an application for an order to show cause, which deponent requests be returnable at Syracuse, New York on January 13, 1975. An application to intervene by Big Moose Property Owners Association, Douglas L. Bennett and Bonnie L. Bennett in the action brought by the State of New York is scheduled to be heard before the United States District Court, Northern District of New York at the Federal Building in the City of Syracuse on the said 13th day of January 1975 at 10:00 a.m., or as soon thereafter as counsel

Affidavit of William J. Foley in Support of Motion.

can be heard. The application for intervention by the Town of Webb cannot be brought on and be heard on January 13, 1975 by a notice of motion because there is insufficient time for this procedure.

6. The defendants have made a motion to dismiss the complaint in this action, which motion is returnable at a term of court to be held in Utica on January 27, 1975. The Town of Webb is making the application to intervene in order that it may be a party to the aforementioned proceeding on January 27, 1975, and, therefore, deponent, as attorney for the Town of Webb, has prepared this application so that same may be considered at Syracuse, New York, on January 13, 1975.

7. Deponent has investigated the facts and circumstances in connection with the occupation of Moss Lake by the defendants, and has ascertained the following facts:

The defendants and/or all other individuals who claim to be Indians have occupied Moss Lake since May 14, 1974 without the permission of the Department of Environmental Conservation of the State of New York or any other state authority. The illegal occupation by the Indians was brought to the attention of former Governor Wilson on or about May 20, 1974, and to the attention of Environmental Commissioner James Biggane and Attorney General Lefkowitz at approximately the same time. No



Affidavit of William J. Foley in Support of Motion.

action was taken by said persons or any of their agents to remove the Indians from Moss Lake, and no legal proceeding was commenced by the office of the Attorney General until on or about September 9, 1974, when the complaint in this action was verified by James Biggane, who was at that time Environmental Conservation Commissioner.

8. A stipulation was entered into by the office of the Attorney General and the attorneys for the defendants on October 23, 1974 in and by which the Attorney General's Office consented that the time of the defendants to answer or otherwise move be extended to December 1, 1974. On the basis of said stipulation United States District Court Judge James T. Foley did, on October 23, 1974, extend the time of the defendants to answer or otherwise move, to December 1, 1974.

9. By a motion dated November 21, 1974 the defendants requested an extension of time to file their papers in response to the complaint to December 16, 1974. By an order dated November 25, 1974 United States District Court Judge Charles L. Bryant extended the time of the defendants to answer or otherwise move to December 16, 1974. No answer was interposed by the defendants by December 16, 1974. The defendants filed a notice of motion and in support thereof a memorandum, which notice of motion is hereinbefore referred to and is returnable January 27,

1975.

10. Subsequent to the service of the complaint on the defendants and on or about October 28, 1974 the Indians at Moss Lake fired upon and wounded a small child who was a passenger in a car driven by her father to Big Moose, New York. On the same day the Indians fired upon and wounded a young man in another car which was being operated on the same public highway. To date neither the District Attorney of Herkimer County nor any other peace officer has been able to investigate the shooting of these two individuals, as the Indians at Moss Lake will not allow any white man to enter the encampment. The District Attorney of Herkimer County obtained a search warrant to examine any weapons and to investigate the shootings, and the Indian spokesman advised that the search warrant would not be honored, and following that statement the search warrant was not served.

11. The economy of the Town of Webb is dependent on summer visitors, summer residents, hunting, fishing, snowmobiling, and skiing. A substantial part of assessment of property in the Town of Webb is in the Big Moose area. As a result of the Indian encampment of Moss Lake, the economy of the Big Moose area and the Town of Webb generally has been drastically interfered with. In particular, the Big Moose area is during the hunting season a popular area for the deer hunters. Because of the Indian encampment



Affidavit of William J. Foley in Support of Motion.

few hunters proceeded to Big Moose during hunting season just past. The business places at Big Moose depend to a large extent on the snowmobile business, and in the event the illegal Indian encampment is allowed to continue, the snowmobile business and its resulting benefit to the economy will be substantially interfered with. In fact, the hotel owners in the Big Moose area have received many cancellations because of the Moss Lake encampment and the dangers incident thereto.

12. The children from the Big Moose area are transported to the central school at Old Forge by bus, and the only road from Big Moose to Old Forge passes through the Moss Lake encampment. The parents of the children are rightfully concerned about the safety of the children and some are contemplating keeping the children at home until the Indians are evicted.

13. Submitted in support of this application is a proposed complaint of the Town of Webb which sets forth additional causes of action than the cause of action contained in the complaint of the State of New York.

14. Attached to this affidavit and made a part hereof is a news release which appears in the Utica Daily Press of January 8, 1975. It appears from the news article that the spokesman for the Indians, Kakwirakeron, stated with reference to the action in this court, if the Court ruled to oust the

Affidavit of William J. Foley in Support of Motion.

Indians, "We are here to stay. This is our home, our families are well situated, and we are just seeking justice."

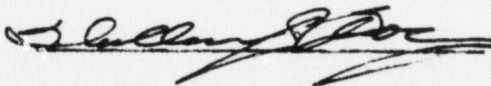
15. As more fully appears in the complaint and for the reasons hereinabove stated in this affidavit, the applicant, Town of Webb, claims an interest relating to the property which is the subject of this action, and the disposition of this action may impair the applicant's ability to protect that interest; further, the applicant's interest is not adequately represented by the existing parties and the applicant's claim and the main action have questions of law and fact in common.

16. By a resolution of the Town Board of the Town of Webb, which resolution was unanimously adopted, deponent was directed to prepare and submit an application to the United States District Court for the Northern District of New York to allow said Town of Webb to intervene.

17. It is, therefore, urged that the application of the Town of Webb to intervene in the proceedings of the State of New York vs. Danny White, et al, be granted.

18. No previous application has been made for the relief sought herein.

Sworn to before me this  
8th day of January 1975



NOTARY PUBLIC-STATE OF NEW YORK  
MY COMMISSION EXPIRES 3-30-75



News Release from The Utica Daily Press,  
Jan. 8, 1975 attached to Foley Affidavit.

THE UTICA DAILY PRESS Jan. 8, '75

## Indians' Eviction Is Sought in Suit By Association

By JONAS KOVER

**BIG MOOSE** — The Big Moose Property Owners Association Monday filed suit in federal court asking permission to intervene in the civil suit brought by the state against the Indians at Moss Lake.

The complaint calls for immediate eviction of the Indians from the 612-acre state owned camp they have occupied since May, a permanent injunction to prevent them from returning, and \$5 million in damages.

The Indians, claiming they are part of the Mohawk Nation, renamed the camp Ganienkeh, for all Mohawk territory taken over by the United States which encompasses all of the Adirondacks and part of Vermont.

Kakwirakeron, chief spokesman for the Indians, said that the Big Moose complaint "is a case of private individuals meddling in important and very delicate government matters." He said that while the state has chosen not to demand an immediate eviction, the Big Moose people are more concerned with monetary matters than the welfare of the Indian families involved.

The motion to intervene, which is actually a suit asking to join the state's action, is expected to be heard in U.S. District Court in Utica on Monday, according to a lawyer for Hancock, Estabrook, Ryan, Shove and Hust, the Syracuse firm representing the property association.

The lawyer said that the \$5 million in damages sought was from loss of income in commercial enterprises and diminution of value in adjoining property.

"The last thing in the world we want to be is inflammatory, but we do want what is entitled to us under law," the lawyer said.

The state filed suit against the Indians last fall in Utica federal court to establish clear title to the land based on an alleged power of attorney exercised by Mohawk Chief Joseph Brant in 1797 to sell Indian land to New York.

The Indians, through lawyers Robert Coulter and Nancy Stearns, moved to dismiss the suit last month, claiming that was not under the court's jurisdiction, calling for, rather

an international tribunal or diplomatic negotiations with a representative of the President.

The next hearing is scheduled Jan. 27 in Utica.

Kakwirakeron said the Six Nations Confederacy, to which the Mohawk Nation belongs, has notified the United Nations in 1945 that Brant was never empowered to act for the Mohawk Nation.

He said the property owners association has based its suit on Brant's "illegal" 1798 treaty and if "they think they have a legitimate complaint it should be forwarded to the President of the U.S. in accordance with Article VII of the 1794 treaty."

Kakwirakeron said that the Indians maintain that they are not interested in private lands, only public, state lands.

If the court ruled to oust the Indians, Kakwirakeron said they would not go. "We are here to stay. This is our home, our families are well situated and we are just seeking justice," he said.

## INTERVENOR'S COMPLAINT.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----

THE STATE OF NEW YORK,

Plaintiff,

-against-

DANNY WHITE, PAUL WHITE, JR., PAUL WHITE and NORMA WHITE, his wife, LORRAINE MONTGOUR, THOMAS DELARANDE and LORRAINE DELARANDE, his wife, JOHN HEMLOCK, ALLEN HEMLOCK, DIANE HEMLOCK, EARL FRANCIS CROSS, CHRISTOPHER HEMLOCK, ANGUS DEER, DAVID DEER, DAVID DEERHOUSE, WARREN DEER, JIMMY DEER, PAUL WILLIAMS, ALEX AKWIENZIE, TOM COOK, DOUGLAS PINE, ANNIE JOCK, "JOHN" GAMBLE, first name being fictitious, real first name not being known to plaintiff, person intended being in possession of State land in Town of Webb, Herkimer County; "JOHN DOE", "RICHARD ROE", "RITA ROE", "GERALD GOE", "JANE COE", "SAM FOE", "GLADYS HOE", "AL JOE", "JANE DOE", "SUE WOE", "PETER MOE", "PHILIP SOE", "CAROL ZOE", "DONALD POE", "FRED MOE", "BOB BOE", "WARREN KOE", "BILL VOE", and "JOE WOE", True names of parties being unknown, parties intended being in possession of State land in the Town of Webb, Herkimer County,

INTERVENOR'S  
COMPLAINT

Civil Action  
File No.  
74-CV-370

Defendants.

TOWN OF WEBB, a municipal corporation in Herkimer County, New York,

Intervening Plaintiff.

-----

The above-named plaintiff-intervenor alleges:

1. This plaintiff, the Town of Webb, herein admits and re-pleads the allegations contained in the paragraphs designated "1", "3", "4", "5", "6", "7", "8", "9", "11", "12", "13" and "28" in the original complaint.



2. This plaintiff admits the allegation contained in the paragraph designated "2" in the original complaint, except that portion of the paragraph that provides that defendants "entered into possession of the property on or about June 1st, 1974".

3. This plaintiff states that it does not possess sufficient knowledge or information to be able to form a belief as to the balance of the allegations contained in the original complaint.

4. At the present time and at all times hereinafter relevant, this plaintiff was and is a municipal corporation in Herkimer County, New York, with its principal office and place of business at Old Forge, New York.

5. Upon information and belief that on or about May 13th, 1974, the defendants, Danny White, et al., seized the premises described in Paragraph 5 of the original complaint, hereinafter referred to as the Moss Lake Camp Property, and have illegally occupied the aforesaid premises from that time. The said premises seized by the defendants are situated in the Town of Webb.

6. On information and belief the defendants, Danny White, et al., their invitees, followers and successors claimed title to nine million acres of land in the States of New York and Vermont pursuant to the Ganienkeh Manifesto, Exhibit 2 in the original complaint, and said claim includes the Moss Lake Camp property.

7. That the Town of Webb owns roads and property in the Big Moose - Moss Lake area, and also in excess of 1,000 acres of land,

with valuable buildings thereon, in the Town of Webb and in the area claimed by the defendants pursuant to the aforesaid Ganienkeh Manifesto.

8. That the aforesaid claim casts a cloud upon the title to land owned by this plaintiff and severely impairs its market value and alienability.

9. Upon information and belief that the determination of the Court in this matter could cast a cloud upon the title of lands owned by this plaintiff or remove any cloud from the title of the lands owned by this plaintiff.

10. That from the aforesaid facts, this plaintiff has an interest in the subject of this controversy, as property rights which have been, and continue to be, affected by the illegal seizure of the Moss Lake Camp property and will have its property rights affected by any determination in this action.

11. By reason of the facts aforesaid, this plaintiff is and will suffer irreparable damage.

FOR A SEOCND, SEPARATE  
AND DISTINCT CAUSE OF  
ACTION

12. This plaintiff repeats and re-alleges the allegations contained in Paragraphs 1 through 6 aforesaid with the same force and effect as if set forth at length herein.

13. That the illegal seizure and occupation of the Moss Lake Camp property by the defendants has caused the private pro-



erty the Big Moose - Moss Lake area to drastically decline in value and has severely impaired the alienability of the aforesaid property.

14. That at a meeting of the Big Moose Property Owners Association and other citizens held in Syracuse, New York on December 8, 1974, several owners of property in the Big Moose - Moss Lake area declared their intentions to petition the Board of Review of Tax Assessment of the Town of Webb for decreases in the assessed value of their property based upon the decline in market value since the illegal occupation of the Moss Lake Camp property by the defendants.

15. That the Town of Webb will suffer severe pecuniary losses as a result of the decreased value of the aforesaid properties and the decreased property tax assessments which will attend the decline in market value.

16. That the pecuniary loss and damage which will be sustained by the Town of Webb cannot be accurately determined at this time. Such loss and damage will be substantial unless the prayer for relief requested in this complaint is granted.

FOR A THIRD, SEPARATE  
AND DISTINCT CAUSE OF  
ACTION

17. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1 through 6 aforesaid with the same force and effect as if set forth at length herein.

## Intervenor's Complaint.

18. That the land seized by defendants, Danny White, et al., is a portion of the lands conveyed by Will'am Seward Webb and Eliza Osgood Webb, his wife, and Na-Ha-Se-Nee Park on January 16th, 1896 and that the aforesaid land was conveyed subject to restrictive covenants perpetually running with the land which provides that the public shall have the unrestricted right to hunt and fish upon said lands and that travel upon the highway and access roads in said lands should remain forever unimpeded and open.

19. That the benefits of the restrictive covenants aforesaid inured to the Town of Webb, the residents of the Town of Webb, and the general public.

20. That the defendants, Danny White, et al., have violated the aforesaid restrictive covenants to the detriment of the residents of the Town of Webb in that they cannot hunt or fish upon the Moss Lake Camp property and access to said property is prohibited.

21. That as a result of the aforesaid breach of the restrictive covenants, pecuniary loss and damage will be sustained, but it cannot be accurately determined at this time. Such loss and damage will be substantial unless the prayer for relief requested in this complaint is granted.

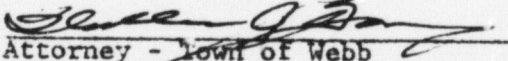
WHEREFORE, plaintiff-intervenors respectfully demand that judgment be granted:



## Intervenor's Complaint.

1. Granting this plaintiff the same relief sought by the State of New York in the original complaint.
2. Granting a temporary injunction to prevent the defendants from occupying, residing upon and claiming title to, the premises owned by the Town of Webb and the premises owned by the State of New York pending a determination of this matter.
3. Granting a permanent injunction to prevent the defendants from occupying, residing upon and claiming title to the premises owned by the Town of Webb and the premises owned by the State of New York.
4. Granting judgment against the defendants, Danny White, et al., for damages caused to the plaintiff, the amount of said damages to be computed in the event the relief requested in this complaint is not granted.
5. Directing that a writ of mandamus be issued directing the agents of the original plaintiff to remove the defendants, Danny White, et al., and all persons similarly situate from the said premises pending the determination of this action.
6. Granting this plaintiff the costs and disbursements of this action.
7. Granting this plaintiff such other and further relief as to the Court may seem just and proper.

FOLEY & FRYE  
Attorneys for Intervening Plaintiff  
Office and Post Office Address  
185 Genesee Street  
Utica, New York 13501  
Tel. (315) 733-7549

By:   
Attorney - Town of Webb

## AFFIDAVIT OF GENE K. SHAFFER.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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STATE OF NEW YORK,

Plaintiff,

-vs-

DANNY WHITE, et al.,

Defendants.

Civil Action  
No. 74-OV370

AFFIDAVIT

DOUGLAS L. BENNETT, BONNIE L. BENNETT,  
AND BIG MOOSE PROPERTY OWNERS  
ASSOCIATION,

Applicants for  
Intervention

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STATE OF NEW YORK )  
COUNTY OF MONROE ) SS.:  
CITY OF ROCHESTER )

GENE K. SHAFFER, being duly sworn, deposes and says:

I am the President of the YMCA of Rochester and Monroe County, which has its metropolitan offices at 100 Gibbs Street in the City of Rochester, New York. This affidavit is made by me in its behalf.

The affidavit is submitted to the Court in support of a part of the motion brought by Big Moose Property Owners Association under Rule 24 of the Federal Rules of Civil Procedure to intervene in the action which is named above in the title.

That action, brought by the Attorney General of the State of New York, seeks among other things a declaratory judgment with respect to certain property to which the State has record title but which is presently occupied by the defendants and title to which is claimed by them. In that action the State



## Affidavit of Gene K. Shaffer.

also seeks an injunction, in the event title to the property is found in the State after a trial, barring the defendants from further occupation of the property.

While the YMCA of Rochester and Monroe County does not claim any legal interest in the property which is the subject of that action, there are (upon information and belief) questions of law and fact to be decided by the Court therein which bear upon the YMCA's title to its adjacent property known as Camp Gorham.

Camp Gorham, which occupies some 1,100 acres, is located near Eagle Bay, New York, close to Big Moose Road, in the Town of Webb. It is operated by the YMCA of Rochester and Monroe County each summer during the months of June, July and August as a camp for boys between the ages of 11 and 15 years.

Camp Gorham is located adjacent to the property which is the subject of the lawsuit named in the title above and certain questions about the validity and meaning of treaties and chains of title which must be decided in that action are questions which also relate to the YMCA of Rochester and Monroe County's title to its Camp Gorham property.

The YMCA of Rochester and Monroe County, therefore, supports the motion of Big Moose Property Owners Association, of which it is a member, to join as a plaintiff in the Attorney General's lawsuit to the extent that its proposed complaint asks for a declaratory judgment on questions of title and injunctive relief at the end of the trial.

Affidavit of Gene K. Shaffer.

The YMCA of Rochester and Monroe County does not, however, join in the prayer for damages against the defendants or for an order of mandamus against public officials or for preliminary injunctive relief pending a determination of this action.

Respectfully submitted,

14 Gene K. Shaffer 151  
Gene K. Shaffer, President  
YMCA of Rochester and Monroe County

Sworn to before me this  
12<sup>th</sup> day of January, 1975.

14 Douglas S. Martin 81



**DEFENDANTS' OPPOSITION TO APPLICATIONS  
FOR INTERVENTION.**

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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THE STATE OF NEW YORK,

PLAINTIFF

V.

DANNY WHITE, et al.,

DEFENDANTS

DOUGLAS L. BENNETT, BONNIE L. BENNETT  
and BIG MOOSE PROPERTY OWNERS ASSOC.,

APPLICANTS FOR  
INTERVENTION

TOWN OF WEBB, a municipal corporation  
in Herkimer County, New York

APPLICANT FOR  
INTERVENTION

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**DEFENDANTS' OPPOSITION TO  
APPLICATIONS FOR INTERVENTION**

On November 24, 1974, the Grand Council of the Six  
Nations Confederacy addressed the following letter to this Court:

To: The United States District Court for the Northern  
District of New York

The action of the State of New York v. Danny White, et al., (Ganienkeh), is in reality an action against the Mohawk Nation and the Six Nations Confederacy regarding the ownership of or sovereignty over the land of Ganienkeh. As such, it may not properly be decided by the courts of the United States, nor do the Mohawk Nation or the Six Nations Confederacy consent to be sued in United States courts.

The question of the ownership of or sovereignty over the land of Ganienkeh can only be decided in an international forum or by diplomatic negotiations between the United States and the Six Nations.

Therefore, the Six Nations Confederacy hereby formally objects to any assertion of jurisdiction by the United States District Court for the Northern District of New

## Defendants' Opposition to Applications for Intervention.

York over this matter.

Signed: Chief Gordon Peters  
Secretary, Six Nations,  
Under the Direction of the  
Grand Council of the  
Six Nations Confederacy  
held on November 24, 1974.

This case concerns which of two nations or governments owns a particular piece of land. The issues or interests raised by private parties are at best collateral and apart from the principal issue. The alleged title of New York State rests upon an allegedly valid treaty. The question of the validity of that treaty will determine which of two nations owns that land. The interests asserted by individuals are private, non-governmental interests of a wholly different nature and are entirely subordinate to the interests of New York State.

Both defendants and the Six Nations Confederacy have asserted that the question of the ownership of the land as between nations is not one which can properly be decided by the courts of one of those nations.\* If this is a matter which is not appropriate for decision by this Court, it is likewise not the type of matter where intervention by individual private interests or minor and subordinate governmental entities is proper or desirable.

Denial of intervention would not leave petitioners without remedy, however. The appropriate remedy and course of action for the petitioners is to address their complaints to the executive branch of the Federal government. Such complaints are subject to the provisions of Article VII of the Treaty of 1794.\*\* The

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\* Defendants' Memorandum in Support of their Motion to Dismiss is hereby incorporated by reference in order to avoid burdening this Court with undue repetition of the arguments presented therein.

\*\* Article VII states as follows:

Lest the firm peace and friendship now established should be interrupted by the misconduct of individuals, the United States and the Six Nations agree, that for injuries done by individuals on either side, no private revenge  
(footnote continued, next page)



Defendants' Opposition to Applications for Intervention.

petitioners must look for satisfaction to the federal government and the procedures established by their government under the Treaty.

I. Applicants Have Not Met The Necessary  
Prerequisites for Intervention as of Right  
As Required by Rule 24(a) FRCP

The same factors which make this matter one which is not properly cognizable by this Court also make it improper to permit intervention by any of the petitioners. The title of New York State rests upon a purported treaty between the State and the Mohawk Nation, in 1797. To the extent that the petitioners have an "interest relating to the transaction or property which is the subject of the action," Rule 24(a), FRCP, their claims rest upon the title, if any, which was acquired by New York State under the treaty. The claims of petitioners are subordinate to and derivative of the claims of New York State. The rights of the petitioners as citizens and the rights of the Town of Webb are in this case wholly dependent on the resolution of the conflicting legal and political claims of the Six Nations, and the United States and the State of New York. The interests of the petitioners are embraced within the larger interests of the State of New York.

Rule 24(a) of the Federal Rules of Civil Procedure governing intervention as a matter of right states as follows:

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right

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(footnote continued from preceeding page)

or retaliation shall take place; but, instead thereof, complaint shall be made by the party injured, to the other: By the Six Nations or any of them, to the President of the United States, or the Superintendent by him appointed: and by the Superintendent, or other person appointed by the President, to the principal chiefs of the Six Nations, or of the nation to which the offender belongs: and such prudent measures shall then be pursued as shall be necessary to preserve our peace and friendship unbroken; until the legislature (or great council) of the United States shall make other equitable provision for the purpose.

Defendants' Opposition to Applications for Intervention.

to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Thus three tests must be met before a petitioner may intervene as of right. 1) The petitioner must have an interest relating to the property or transaction; 2) the disposition of the action must sufficiently affect that interest; and 3) it must be shown that the interest is not adequately represented by the existing parties.

The Interests of Petitioners Are Adequately Represented by New York State

The petitioners Douglas Bennett, Bonnie Bennett and the Big Moose Property Owners Association assert an interest in the land claimed by New York State, based upon alleged covenants running with the land. Because the alleged title to the land of these petitioners rests upon the 1797 treaty and the title of New York acquired thereunder, and because the validity of the covenants likewise depends on the validity of the treaty,<sup>\*</sup> the petitioners claim an interest relating to the property and the transaction which is the subject of this action. Assuming, arguendo, that this interest satisfies Rule 24, and assuming that this interest could be affected by the disposition of this case, nevertheless this interest is fully and adequately represented by the State of New York.

Petitioners Bennett, et al., make no showing whatever that their interests are not adequately represented by New York State. In this regard the complaint alleges only that the State has failed to enforce the covenants since the occupation by the Indians. It is clear, however, that New York has proceeded

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\* For the validity of the title of William Seward Webb and Eliza Osgood Webb, who allegedly entered into the covenants, and every other link in the chain of title herein depends on the validity of the treaty which allegedly relinquished the right of the Mohawk Nation and the Six Nations Confederacy to the land herein.



## Defendants' Opposition to Applications for Intervention.

with reasonable diligence to assert its title and effect removal of the Indians through this action.

A leading treatise on federal practice asserts, "...[The] burden to show that representation may be inadequate ought to be upon the applicant." 3 Moore's Federal Practice 24-316 (1974). Nothing in the motion or complaint shows that these petitioners have divergent or opposing interests to those of New York, nor that New York has been in any way lax or incompetent, nor is there any allegation of collusion, fraud or bad faith.

Where, as here, the claim of the petitioner-intervenor is derived from or embraced within the larger claim or interest of a party, the good faith effort of the party to maintain its title assures adequate representation of the intervenor's interest. In Archer v. United States, 268 F.2d 687 (10th Cir., 1959) the United States sought to quiet its title to an area of land as against the State of Utah. The owners of a mining claim on part of the land sought to intervene. The mining claim was derived from the United States. The court held that the owners of the mining claim had no right to intervene because their interest was adequately represented. The court wrote:

The defeat of the claim of Utah and those claiming under Utah is essential to both the United States and the appellants [intervenors]. The interest of the United States is far greater than that of the appellants as it concerns substantially more land. ... Here the United States is vigorously contesting the claim of Utah. In this regard it is representing the interests of the appellants and we shall not assume that such representation will be inadequate. ... The good faith efforts of the United States to maintain its title as against Utah and those claiming under Utah assures adequate representation for the appellants in litigation to defeat the Utah claims. 268 F.2d at 689-90 (footnote omitted).

The interests asserted by the Town of Webb are the same as those asserted by the petitioners Bennett and the Big Moose Property Owners Association, with the additional claim that the

## Defendants' Opposition to Applications for Intervention.

tax receipts of the town may decline as a result of the Indians' residence at Moss Lake. Even if we assume that the Town of Webb has such an interest in clearing its own title and in the alleged covenants, there is no showing that these interests are not adequately represented by New York State as discussed above. The only suggestion is that the State did not file suit until September 9, 1974. The petitioner does not allege that this shows lack of diligence, bad faith or collusion, however. Furthermore, even extended delay does not show lack of adequate representation. See, O'Connell v. Pacific Gas and Electric Co., 19 F.2d 460 (9th Cir., 1927).

The other interest, in the tax receipts of the town, is not such an interest as would give rise to an absolute right of intervention, since that interest does not relate to the property or transaction before the Court. United States Circuit Judge J. Skelly Wright, sitting by designation, commenting on Rule 24 noted: "Still required for intervention is a direct, substantial, legally protectable interest in the proceedings." Hobson v. Hansen, 44 F.R.D. 18, 24 (D.D.C., 1968). The issues of land values and tax assessments are not now before the Court. Furthermore, it is highly doubtful whether the Town has a legally protectable right to have tax assessments at any given level. In any event, the alleged decline in property values arises, at best, indirectly from the Indians' claim to the land, and in this regard there is no showing that the State is not adequately representing the interest of the Town and other members of the public in contesting this claim. The interests asserted by the Town are essentially the interests of the public. As a rule, municipalities have not been permitted to intervene where the interests of the public are already represented by the State. City of New York v. New York Telephone Co., 261 U.S.



Defendants' Opposition to Applications for Intervention.

312 (1923); Gross v. Missouri & Arkansas Ry., 74 F.Supp. 242 (W.D.Ark., 1947).

Thus, none of the petitioners have an interest in the subject of this action which is not adequately represented by the State, and they therefore have no absolute right to intervene.

II. The Applicants Are Not Entitled to Permissive Intervention

Under Rule 24(b) of the Federal Rules of Civil Procedure a petitioner seeking to intervene in an on-going action must first establish that his claim presents questions of law and fact that are common with those raised by the plaintiff in the main action. Even when that has been demonstrated, however, the court should properly deny intervention when intervention would cause delay (see Rule 24(b)), because the interventions may "result in accumulating proofs and arguments without assisting the court." Allen Calculators, Inc., v. National Cash Register Co., 322 U.S. 137 (1944); Joint Anti-Facist Refugee Committee v. McGrath, 341 U.S. 123, 135 n. 10 (1951). See also, 3B Moore's Federal Practice ¶24.10[4] (1974).

In addition, the court may properly deny permissive intervention even though common questions of law or fact are present "... if, in addition, collateral or extrinsic issues would be brought in by the intervenor." 3B Moore's Federal Practice ¶24.10[4] (1974); Malamut v. Haines, 54 F. Supp. 378 (M.D. Pa., 1944). Where those collateral issues would "fundamentally alter and seriously complicate the character of [the] proceedings" intervention should certainly be denied. United States v. Columbia Gas & Electric Corp., 27 F.Supp. 116 (D. Del., 1939).

## Defendants' Opposition to Applications for Intervention.

What is more, when the complicating factor is merely the question of damages, intervention should be denied. Thus, for example, in *Commonwealth Edison Co. v. Allis-Chalmers Mfg. Co.*, 315 F.2d 564 (7th Cir., 1963), cert. denied, 375 U.S. 834 (1963), the court denied the application of the State of Illinois to intervene both as a matter of right and permissively in consolidated actions alleging an illegal price-fixing conspiracy, because the State was raising different questions as to damages. As the court stated:

While it is apparent that the state's claim as to the issue of the conspiracy will present questions of law and fact in common with the main actions, this is not true as to the question of damages. 315 F.2d at 567.

In addition, where the claim of injury is too speculative or too contingent on unknown factors, intervention should also be denied. *Sutphen Estates, Inc. v. United States*, 342 U.S. 19 (1951).

The applications of both Douglas Bennett, et al., and the Town of Webb contain all of the vices which led the courts in the cases cited above to deny the applications for intervention. In this action the State of New York has raised the primary issue whether the State of New York or the Six Nations Confederacy has proper title to the 612 acres of land which formerly was a girls' camp and now is known as Ganienkeh. The movants are seeking to raise a multitude of complicated, collateral issues based on at best speculative claims. If permitted this will inevitably and substantially complicate and delay the disposition of this action. A review of the complaints in intervention makes this quite obvious.



Defendants' Opposition to Applications for Intervention.

Among the collateral issues raised by the applicants are the following:

a) as to Douglas L. Bennett, Bonnie L. Bennett and the Big Moose Property Owners Association:

1. Whether covenants allegedly running with the land at issue in plaintiff's complaint are in force and whether they in fact grant unrestricted hunting and fishing rights as claimed by applicants
2. Whether applicants are suffering \$5,000,000 in damages as a result of a denial of hunting and fishing rights as alleged;
3. Whether there are similar covenants running with the property around and containing Bubb Lake and Sis Lake which grant applicants unrestricted hunting and fishing rights;
4. If so, whether those covenants are valid and in force;
5. Whether defendants in fact have "seized and occupied" the premises known as Bubb Lake and Sis Lake, as alleged;
6. Whether defendants, in fact, have claimed title to land owned by applicants in such a fashion as to place a cloud on their title;
7. Whether applicants have, in fact, suffered monetary damages from the alleged cloud on their titles and if so, in what amount;
8. Whether, as a matter of law, applicants are entitled to temporary injunctive relief;
9. Whether applicants are entitled to \$5,000,000 in damages as alleged.

## Defendants' Opposition to Applications for Intervention.

b) as to the Town of Webb:

- 1) Whether the defendants have made any claim of title to the land owned by applicant sufficient to place a cloud on their title;
- 2) Whether the presence of the defendants on the land in question gives rise, as a matter of law, to a claim by applicants against defendants for reduction of property values;
- 3) Whether as a matter of fact, the value of property owned by applicants and its alienability, has declined and if so, what the proximate cause of that decline is;
- 4) Whether the applicant has a cause of action under the law against defendants for an anticipated decrease in tax revenues resulting from an alleged decrease in property values;
- 5) Whether the covenants allegedly running with the land in question herein are in force and whether in fact they grant unrestricted hunting and fishing rights to the residents of the Town of Webb as alleged;
- 6) Whether applicant is entitled to a judgment of damages against defendant, for what, and if so, in what amount;
- 7) Whether applicant is entitled to temporary injunctive relief under the law.

The mere recitation of the above issues raised in the papers of the respective applicants indicates that their motions to intervene should be rejected as unduly complicating this



## Defendants' Opposition to Applications for Intervention.

action by bringing in involved, collateral issues, many of which are at best speculative. In fact, these collateral issues and new parties would be likely to overwhelm the main action with a multiplicity of extraneous details. Even if there were no new issues raised by the applicants, additional parties mean additional time. As United States District Judge Charles Wyzanski has noted:

Additional parties always take additional time. Even if they have no witnesses of their own, they are the source of additional questions, objections, briefs, arguments, motions and the like which tend to make the proceeding a Donnybrook Fair. Where he presents no new questions, a third party can contribute usually most effectively and always most expeditiously by a brief amicus curiae and not by intervention." Crosby Steam Gage & Valve Co. v. Manning, Maxwell & Moore, Inc., 51 F.Supp. 972, 973 (D.Mass. 1943)

Here, where in addition there are a multiplicity of complicated collateral issues interjected by applicants, the proceedings are likely to become hopelessly bogged down.

This Court should therefore clearly follow the rulings of the courts in Malamut, Commonwealth Edison Co. and Sutphen Estates and deny the applicants for intervention.

There is one final consideration which indicates that the application for intervention should be denied. If these applicants are permitted to intervene, an indefinite number of other property owners in the vicinity of the land in question could intervene as well and this action would become so unwieldy as to be unresolvable. cf. O'Connell v. Pacific Gas & Electric, supra.

CONCLUSION

Since the issues raised by defendants in their Motion To Dismiss regarding the inappropriateness of the federal courts to decide the question of the ownership of the land as between nations, may well dispose of this action, this Court may wish to delay its ruling on applicants' Motions to Intervene, until

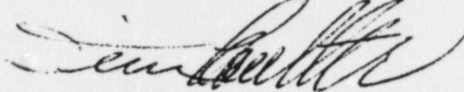
## Defendants' Opposition to Applications for Intervention.

defendants Motion to Dismiss, which is scheduled to be heard, on January 27, 1975 is heard and determined.

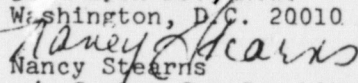
If however, this Court wishes to rule on applicants' motions at this time, defendants urge that for all of the foregoing reasons, this Court should reject the applications to intervene, as a matter of right and /or permissively, of Douglas L. Bennett, et al., and the Town of Webb.

Dated: New York, N.Y.  
January 13, 1975

Respectfully Submitted,



Robert T. Coulter  
3210 19th St., N.W.  
Washington, D.C. 20010



Nancy Stearns  
c/o Center for Constitutional  
Rights  
853 Broadway  
New York, N.Y. 10003



MOTION FOR SUMMARY JUDGMENT.

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF NEW YORK

---

THE STATE OF NEW YORK,

Plaintiff,

-against-

DANNY WHITE, et al.,

Defendants.

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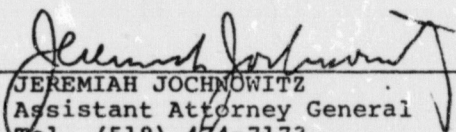
CIVIL ACTION  
FILE NO. -  
74-CV-370

MOTION FOR SUMMARY JUDGMENT  
PURSUANT TO RULES 12(b) AND 56

The State of New York, plaintiff in this action, moves the Court for summary judgment pursuant to Rules 12(b) and 56 of the Federal Rules of Civil Practice upon the summons and complaint herein, defendants' motion to dismiss the complaint, defendants' brief in support of that motion and the materials not part of the complaint attached thereto, and the affidavit of Jeremiah Jochowitz, sworn to the 14th day of January, 1975.

LOUIS J. LEFKOWITZ  
Attorney General of the  
State of New York  
Attorney for Plaintiff, State  
of New York  
Office and P.O. Address  
The Capitol  
Albany, New York 12224

By

  
JEREMIAH JOCHOWITZ  
Assistant Attorney General  
Tel. (518) 474-7173

## Motion for Summary Judgment.

NOTICE OF MOTION

TO: NANCY STEAPNS  
c/o Center for Constitutional Rights  
853 Broadway  
New York, New York 10003  
(212) 674-3303

ROBERT T. COULTER  
3240 19th St. N.W.  
Washington, D.C. 20010  
(202) 332-4282  
Attorneys for Defendants

FOLEY & FRYE, ESQS.  
Attorneys for Town of Webb  
Applicant for Intervention  
185 Genesee Street  
Utica, New York

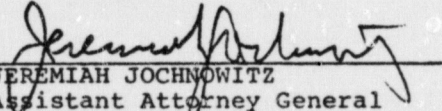
HANCOCK, ESTABROOK, RYAN,  
SHOVE & RUST, ESQS.  
Attorneys for Douglas Bennett,  
Bonnie Bennett and Big Moose  
Property Owners Association,  
Applicants for Intervention  
One Mony Plaza  
Syracuse, New York 13202  
(315) 471-3151

PLEASE TAKE NOTICE that the undersigned will bring  
the above motion on for hearing before this Court at the  
Federal Building, Utica, New York, on the 27th day of January,  
1975, at 10 o'clock in the forenoon of that day or as soon  
thereafter as counsel can be heard.

Dated: January 14, 1975

LOUIS J. LEFKOWITZ  
Attorney General of the State  
of New York  
Attorney for Plaintiff, State of  
New York  
Office and P.O. Address  
The Capitol  
Albany, New York 12224

By

  
JEREMIAH JOCHNOWITZ  
Assistant Attorney General  
Tel. (518) 474-7173



**AFFIDAVIT OF JEREMIAH JOCHNOWITZ IN  
SUPPORT OF MOTION.**

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF NEW YORK

THE STATE OF NEW YORK,

Plaintiff,

-against-

DANNY WHITE, et al.,

Defendants.

CIVIL ACTION  
FILE NO.  
74-CV-370

AFFIDAVIT

STATE OF NEW YORK )  
                          ) ss.:  
COUNTY OF ALBANY )

JEREMIAH JOCHNOWITZ, being duly sworn, deposes and says:

1. I am an Assistant Attorney General in the office of the Attorney General of the State of New York, attorney for plaintiff.

Proceedings Herein to Date

2. The above action was commenced by filing a summons and complaint in the United States District Court for the Northern District of New York, on September 11, 1974.

3. On or about October 16, 1974, a stipulation was entered into between the plaintiff and defendants herein, at the request of the defendants, extending defendants' time to enter or otherwise move to December 1, 1974.

4. On November 25, 1974, defendants moved for a further extension of time and were granted until December 16, 1974, to answer or move.

5. The defendants moved to dismiss the complaint by motion returnable January 22, 1975 (which notice of motion was amended to make the motion returnable January 27, 1975) on the following grounds:

"a) A dispute between two nations, or the respective states of those nations, regarding the ownership or sovereignty over land is an international matter which may not be decided by the courts of one of those nations;

"b) The validity of treaties entered into by the executive branch of the United States is a political question which is not appropriate for determination by the courts of the United States;

Affidavit of Jeremiah Jochnowitz in Support  
of Motion.

"c) This action which raises the question of the ownership of or sovereignty over the land of Ganienkeh is in reality an action against the Mohawk Nation and the Six Nations Confederacy, and therefore is barred by the doctrine of sovereign immunity."

6. Motions were made by Douglas Bennett, Bonnie Bennett and Big Moose Property Owners Association and the Town of Webb to intervene which motions were argued but not decided pending disposition of defendants' motion to dismiss.

7. Although the defendants' motion does not state the Federal rule under which defendants are moving for dismissal of the complaint, the sole authority for such a motion to dismiss a complaint is Rule 12 of the Federal Rules of Court Procedure.

8. Rule 12(b) of the Federal Rules of Civil Practice provides, in part, that <sup>if in</sup> a motion:

"to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56 \* \* \*".

The brief submitted by defendants in support of their motion contains material outside of their complaint and, therefore, pursuant to Rule 12(b) is to be treated as a motion for summary judgment. The material outside of the complaint on which defendants rely in their brief consists of a copy of a letter written by a Chief Gordon Peters, claiming to be Secretary of the Six Nations (page 4 of brief) and a copy of a letter written by the United States Department of Interior (Appendix A to brief).

9. This cross-motion by the State for summary judgment pursuant to Rule 56 of the Rules of Federal Procedure is based upon documentary and historical material alleged in the complaint of which the Court may take judicial notice. Rule 56 provides that after service of a motion for summary judgment by the adverse party [a party may] move with or



without supporting affidavits for summary judgment. The material relied on by the plaintiff in this case is not contradicted by defendants' contentions in their motion and brief which basically attack the jurisdiction of this Court over them as members of an Indian nation. The material clearly shows that the State is the absolute owner of the premises illegally occupied by the defendants and is entitled to immediate possession of them.

10. The basis of the State's title is:

A. The State acquired title to 612.7+ acres of land in the Town of Webb, County of Herkimer, being part of Township 8 of John Brown's Tract, which lands are now illegally occupied by the defendants, from the Nature Conservancy for the sum of \$783,000 by deed dated August 7, 1973, recorded August 14, 1973 in the office of the Clerk of the County of Herkimer, in Book 629 of Deeds, page 672. A copy of this deed is attached to the complaint as Exhibit I.

B. The reason that Nature Conservancy acquired these lands was to preserve them as a natural scenic area and by their conveyance to the State of New York this purpose was assured.

C. The lands in question here became part of the Forest Preserve on their acquisition by the State.

D. The lands involved in this suit were originally part of territory controlled by the Mohawk Indians, who, by treaty proclaimed April 27, 1798 (Complaint, Exh. IV) waived all of their right, title and interest to any lands in the State of New York.

E. Prior to acquisition of land in the Forest Preserve the State of New York secures an abstract of title extending back over forty years. In the instant case such an abstract was secured and it reveals the following past history and chain of title of the property:

Affidavit of Jeremiah Jochnowitz in Support  
of Motion.

1. Deed from Paul Sheldon to Carolyn S. Longstaff dated August 24, 1920, recorded October 2, 1920, in Book 221 of Deeds at page 7, in the Herkimer County Clerk's Office.
2. Carolyn Longstaff's will probated in Queens County Surrogate's office on October 19, 1937, leaving the property to George H. Longstaff, her son.
3. Deed from George H. Longstaff to Robert F. Rider and Jane N. Rider, his wife, dated February 12, 1973, recorded February 26, 1973, in Book 626 of Deeds at page 498, in the Herkimer County Clerk's office.
4. Deed from Robert F. Rider and Jane N. Rider, his wife, to Nature Conservancy, dated June 22, 1973, recorded June 27, 1973, in Book 628 of Deeds at page 587, in the Herkimer County Clerk's office.  
(Certified copies of the above instruments and the Comptroller's deed file will be submitted on the argument of this motion.)

F. George Longstaff, Robert F. and Jane N. Rider operated the premises as a children's camp during the period of their ownership for more than twenty years prior to the conveyance to the Nature Conservancy and it is the buildings that were used for this purpose which are now occupied by the defendants.



Affidavit of Jeremiah Jochnowitz in Support  
of Motion.

11. The defendants allege in their motions that they are entitled to possession of the premises as Mohawk Indians and that the Mohawk Indians and the Iroquois Confederates have never been divested of title to the premises.

12. The following document establishes the contrary: The Mohawk Indians entered into a treaty proclaimed April 27, 1798, under the authority of the United States in the presence of Isaac Smith, Commissioner, appointed by the United States to hold this treaty with the State of New York by which treaty the Mohawk Indians specifically ceded and released to the People of the State of New York all right, title and interest in their former lands in New York State. The treaty further specifically stated that it extinguished any claim of the Mohawk Indians to said lands (Treaty of April 27, 1798, Exh. IV attached to the complaint).

13. The Court may take judicial notice of the well-known historical fact that the Mohawk Indian Nation under the leadership of Chief Joseph Brant aligned itself with the British during the Revolutionary War, and at the termination of the Revolutionary War in fear of reprisals by the former Colonists left the United States and moved to Canada and that in Canada at the request of Joseph Brant, Sir Frederick Haldemand petitioned the King of England to grant the Mohawks lands in Canada and that as a result of this petition twelve thousand acres in Grand Valley, Ontario Canada, were granted to the Mohawk Indians.

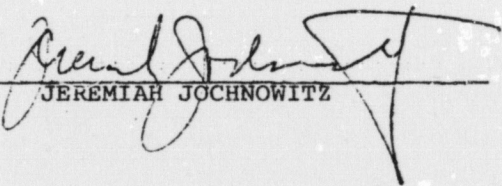
14. The further historical fact is that since leaving the State of New York, the Mohawk Indians have remained in Canada except for a group sometimes called the St. Regis Indians who reside on a Reservation in Hogansburg, New York, and are not participating with defendants in their occupancy of the land here involved. (Letter to Governor Malcolm Wilson dated November 25, 1974 from St. Regis Mohawk Indians attached as appendix to brief in support of this motion.)

Affidavit of Jeremiah Jochnowitz in Support  
of Motion.

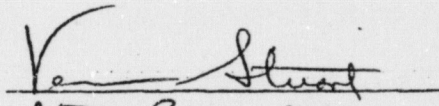
15. Defendants have not disputed the above-cited documents, deeds, treaties and historical references. These clearly establish that the defendants have no right to possession of the premises.

WHEREFORE, deponent respectfully requests that summary judgment be granted to the plaintiff by which this Court:

1. Retains jurisdiction.
2. Grants plaintiff a judgment removing, as a cloud on plaintiff's title, the effects of defendants' contention that they are rightfully in possession of the hereinbefore described premises and declaring that plaintiff is the owner in fee of said premises and restoring possession of the premises to plaintiff and that the defendants be barred from reentering possession of the same.
3. Awards to plaintiff the costs and disbursements of this action.
4. Grants plaintiff such other and further relief as to the Court seems just and proper.

  
JEREMIAH JOCHNOWITZ

Sworn to before me this  
14th day of January, 1975.

  
Notary Public State of New York



## AFFIDAVIT OF HAMILTON S. WHITE.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----

THE STATE OF NEW YORK,	:	
	:	CIVIL ACTION
Plaintiff,	:	<u>FILE NO. 74-CV-370</u>
	:	
-VS-	:	
DANNY WHITE, et al.,	:	
	:	<u>AFFIDAVIT</u>
Defendants.	:	

-----

STATE OF NEW YORK     )  
                          )   SS.:  
COUNTY OF ONONDAGA    )

HAMILTON S. WHITE, being duly sworn, deposes and says that he is a member of the firm of Hancock, Estabrook, Ryan, Shove & Hust, attorneys for the plaintiff-interveners, Douglas L. Bennett, Bonnie L. Bennett and Big Moose Property Owners Association, who have previously made application to intervene in the above-captioned matter. Deponent has been in charge of the application since his firm was retained on December 9, 1974 and, in addition, deponent has spent parts of each year from 1924 to the present time, except for three years during World War II, on Big Moose Lake. By reason thereof, deponent knows the facts hereinafter stated to be true and correct except those matters stated upon belief, and as to them your deponent duly believes the same to be true and accurate.

Affidavit of Hamilton S. White.

1. This affidavit is submitted on behalf of the petitioning plaintiff-interveners in opposition to the motion of the defendants to dismiss the complaint which motion, in essence, is based upon the contention that the suit is a dispute between sovereign nations over which this Court would have no jurisdiction. This affidavit is also submitted in support of the motion of the plaintiff State of New York, when that motion is entertained, for summary judgment adjudging that the State is the owner in fee simple of the Moss Lake Tract, restoring possession of the premises to plaintiff, striking any contention of the defendants that they have any interest in the lands and forever barring their re-entry thereon. Further, this affidavit seeks the same affirmative relief as that sought by the State with reference to the lands owned by the petitioning interveners, that is, that the defendants, their followers, supporters, invitees, successors and assigns have no interest or title in the lands owned by the petitioning interveners or the members of the Big Moose Property Owners Association.

2. To supplement the affidavit of Jeremiah Jochnowitz sworn to January 14, 1975, annexed to the moving papers of the State, deponent wishes to add that he has examined the records in the office of the Clerk of the County of Herkimer and from such examination has learned that the premises known as the Moss Lake



## Affidavit of Hamilton S. White.

Tract and the premises of the petitioning interveners have a common source, lands previously owned by the Ne-ha-sa-ne Park Association and/or William Seward Webb and Eliza Osgood Webb, his wife. All of said lands were subject to the restrictions known as the "Webb Covenant" contained in the deed from William Seward Webb and wife and the Ne-ha-sa-ne Park Association to the State of New York dated January 16, 1896.

3. In addition, your deponent was advised and verily believes that the portion of the Central Adirondacks with which the parties are concerned and known as Township 8, John Brown's Tract, Town of Webb, Herkimer County, New York, was patented in the year 1798 to Alexander Macomb who in turn conveyed the same that year to said John Brown from whom William Seward Webb and wife and the Ne-ha-sa-ne Park Association obtained title by mesne conveyances.

4. The plaintiff traces its title to the Moss Lake Tract to Caroline Longstaff in 1920. Deponent knows personally the daughter of Caroline Longstaff and other members of the family, knows personally Robert Rider and Jane Rider, his wife, who took title from the Longstaffs in 1972 and has worked, on occasion, as attorney for The Nature Conservancy of Arlington, Virginia which purchased the Tract from the Riders in 1973 prior to the sale to the State later that year. Deponent knows of his own knowledge that a girls' summer camp was operated from prior to

## Affidavit of Hamilton S. White.

1934 through the year 1972 on the Tract and knows for example that Adolph Nelson, son-in-law of Caroline Longstaff, coached and instructed at the camp known as the Moss Lake Camp and at Camp Cedar Isles in nearby Fourth Lake in the summer of 1934 or 1935.

5. In the late summer of 1973 your deponent spoke with representatives of The Nature Conservancy who advised him that it was purchasing the Moss Lake Tract and that it would in turn sell the same to the State. At this time the entrances to the property were barred and the keys to the lock on the main gate were offered to your deponent but never accepted. By this time the thirty-five odd cottages, larger buildings, dining halls and storage buildings on the property, including a large stone-type residence, were vacated except that Mr. and Mrs. Rider with some of their children were occupying one cottage. Soon thereafter title was transferred to the State, the Riders departed and the State posted yellow signs in the area adjacent to the buildings (some of which were located on both sides of Herkimer County Highway No. 1) advising the public to keep out.

6. The signs were still intact in the latter part of May, 1974, some ten days after occupation of the Tract by a group of people claiming to be Indians of the Mohawk Nation.

7. In May, 1974 your deponent observed that most of the vehicles operated by the occupants bore Province of Quebec registrations and that the money used by them in purchasing groceries



was Canadian. He was advised and verily believes that the occupants came from Canada.

8. Your deponent is informed and verily believes that on or about Sunday, May 19, 1974, the occupants of the Moss Lake Tract held a council at a teepee erected in the former riding rink on the east side of County Highway No. 1, which is the side of the road opposite the actual Lake, to which the local residents were invited. At this council the local residents were informed that the occupants were claiming the premises under purported aboriginal title of the Mohawks and that white people would not be allowed upon the lands.

9. From reviewing numerous historical reports and documents, your deponent is informed and verily believes that prior to 1750 the Iroquois were comprised of six tribes, the Seneca, Cayuga, Onondaga, Oneida, Mohawk and Tuscarora. The lands of the Mohawks were bounded approximately on the west by a line generally north and south which would extend approximately along the current westerly boundary of Herkimer County, on the east by the Hudson River and Lake Champlain, on the north by the St. Lawrence River and on the south by lands in what is now Pennsylvania with their villages and principal places of residence on the south side of the Mohawk River in the general area of Canajoharie. The lands of the several tribes are described in chapter 2 of "League of the Iroquois" by Lewis Henry Morgan, which work has been cited by the attorneys for the defendants in their memorandum annexed to their motion to dismiss.

## Affidavit of Hamilton S. White.

10. Your deponent is further informed and believes it to be common knowledge of which the Courts may and have taken judicial notice that in 1768, prior to the Revolutionary War, the Iroquois requested a meeting which was held at Fort Stanwix to establish a boundary line between the Indians and the British to put an end to the complaints of the Indians caused by alleged encroachment of whites upon their lands. The meeting was conducted by Sir William Johnson, all of the Iroquois tribes were present and represented, together with the Delawares and the Shawnees, the Governors of Pennsylvania and New Jersey and delegates from Virginia. As a result of this conference on November 9, 1768, the "line of property" or "Stanwix Line" was established which gave to the Iroquois lands primarily located in what is now the westerly part of New York State and to the west and south. The lands reserved to the Indians at this time were south and west of the lands with which we are concerned.

11. Thus it was until the commencement of the Revolutionary War when both sides sought the aid and services of the Iroquois. Then it was that the Iroquois abandoned their rule of unanimity and permitted each tribe to go its separate way, the Oneida with the Colonies, the Mohawk, under Chief Joseph Brant, with Colonel Guy Johnson and Sir William Johnson, with the Crown.

12. The initial conquests of the Mohawks under Brant in the Mohawk Valley are recorded fact. But, by the end of the War the Mohawks were defeated and temporarily residing on the east side of the Niagara River in the western portion of the State. The



Affidavit of Hamilton S. White.

Treaty of Paris, 1783, between the Colonies and the Crown, afforded them no relief nor recognition; later in 1783 at the request of Brant, Governor General Haldiman of Canada permitted them to remove to and to occupy the Grand River Valley north of Lake Erie.

13. In the following year, 1784, the Treaty of Fort Stanwix was conducted. While apparently the Treaty was signed by Mohawk chiefs, no specific rights or relief were therein granted to the Mohawks. Lands were prescribed for the Oneida and Tuscarora tribes. Nor did the Mohawks obtain any rights under the next Treaty of Fort Harman, 1789, from which they were absent and to which they were given six months to join, though apparently they never did. Nor were they specifically mentioned in the Treaty of 1794.

14. In 1796 in the Treaty of New York, which was attended by a duly authorized Federal Commissioner, there was created for the Mohawks their reservation on both sides of the St. Lawrence River, together with two other certain tracts of land not pertinent hereto. By this Treaty signed by a duly authorized chief of the Mohawks and representatives of the sever Nations of Canada, including the Canadian counterparts of the six Nations of New York State, the Indians released and ceded to the State of New York all lands except those described above, not pertinent hereto.

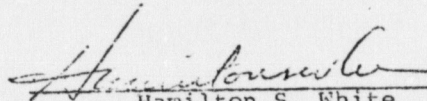
15. This Treaty was followed by the Treaty of 1797 with the Mohawk tribe of Indians located within New York State and

## Affidavit of Hamilton S. White.

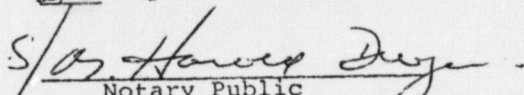
known as the St. Regis-Mohawks, under the sanction of the United States Government, which was proclaimed in 1798 in which the Mohawks released and ceded to the State of New York all claims to any lands therein except as to the tribal reservation and the two tracts not pertinent hereto.

16. Thus, it appears that prior to the Revolutionary War the Mohawk Nation, subsequent to the Stanwix Line of 1768, had no claim to the lands in question; that in any event any claim of the Mohawks to New York lands was lost and extinguished by their conduct in the Revolutionary War and by the Treaty of Paris; that no lands were guaranteed them under the Treaties of 1784, 1789, or 1794 and that the Treaties of 1796 and 1797 served as quitclaim deeds on the part of any Canadian or New York Mohawk tribe as to any claim to New York lands. Both the latter Treaties were conducted pursuant to the provisions of the Indian Non-Intercourse Act of 1790 as amended in 1793.

17. From 1798 until the present time the lands of the petitioning interveners have been privately owned and the same is true of the Moss Lake Tract acquired by plaintiff in 1973.

  
Hamilton S. White

Sworn to before me this  
3<sup>rd</sup> day of January, 1975.

  
Notary Public



## MEMORANDUM - DECISION AND ORDER.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

THE STATE OF NEW YORK,

Plaintiff

-against-

DANNY WHITE, PAUL WHITE, JR., PAUL WHITE  
and NORMA WHITE, his wife, LORRAINE MONTGOMERY,  
THOMAS DELARANDÉ and LORRAINE DELARANDÉ, his  
wife, JOHN HEMLOCK, ALLEN HEMLOCK, DIANE  
HEMLOCK, EARL FRANCIS CROSS, CHRISTOPHER  
HEMLOCK, ANGUS DEER, DAVID DEER, DAVID  
DEERHOUSE, WARREN DEER, JIMMY DEER, PAUL  
WILLIAMS, ALEX AKWIENZIE, TOM COOK, DOUGLAS  
PINE, ANNIE JOCK, "JOHN" GAMBLE, first name  
John being fictitious, real first name not  
being known to plaintiff, person intended  
being in possession of State land in Town of  
Webb, Herkimer County; "JOHN DOE", "RICHARD  
ROE", "RITA ROE", "GERALD GOE", "JANE COE",  
"SAM POE", "GLADYS HOE", "AL JOE", "JANE DOE",  
"SUE WOE", "PETER MOE", "PHILIP SOE", "CAROL  
ZOE", "DONALD POE", "FRED MOE", "BOB BOE",  
"WARREN KOE", "BILL VOE", and "JOE WOE", true  
names of parties being unknown, parties intended  
being in possession of State land in the Town of  
Webb, Herkimer County.

74-CV-370

Defendants.

APPEARANCES:

LOUIS J. LEFKOWITZ  
Attorney General of the  
State of New York  
The Capitol  
Albany, New York 12224  
Attorney for Plaintiff

JEREMIAH JOCHNOWITZ, ESQ.  
Assistant Attorney General  
Of Counsel

NANCY STEARNS, ESQ.  
c/o Center for Constitutional  
Rights  
853 Broadway  
New York, New York 10003  
Attorney for Defendants

## Memorandum - Decision and Order.

ROBERT T. COULTER, ESQ.  
3240 19th Street, N.W.  
Washington, D.C. 20010  
Attorney for Defendants

FOLEY & FRYE, ESQS.  
155 Genesee Street  
Utica, New York 13501  
Attorneys for Applicant for  
Intervention, Town of Webb

WILLIAM J. FOLEY, ESQ.  
Of Counsel

HANCOCK, ESTABROOK, RYAN,  
SHOVE & HUST, ESQS.  
One Mony Plaza  
Syracuse, New York 13202  
Attorneys for Applicants for  
Intervention, Douglas Bennett,  
Bonnie Bennett and Big Moose  
Property Owners Association

HAMILTON S. WHITE, ESQ.  
Of Counsel

EDMUND PORT, Judge

## MEMORANDUM-DECISION AND ORDER

The defendants have moved to dismiss the complaint for lack of jurisdiction. The plaintiff cross-moves for summary judgment in its favor.

The Complaint

The State of New York is plaintiff and the defendants are <sup>1</sup>23 named and 19 unnamed individuals presently alleged to be occupying the land which is the subject matter of this action.

The only jurisdictional ground alleged is 28 U.S.C. §1331(a). (Federal Question).

The plaintiff, pursuant to 28 U.S.C. §§2201 and 2202 and Rule 65 F.R.Civ.P., seeks a judgment declaring the plaintiff to be the owner in fee of the subject premises, and injunctive relief granting possession of the premises to the plaintiff and re-



## Memorandum - Decision and Order.

straining the defendants from re-entering the premises. Plaintiff seeks further "a judgment removing, as a cloud on plaintiff's title, the effects of defendants' contention that they are right-<sup>2</sup> fully in possession of the hereinafter described premises".

The plaintiff further alleges that a parcel of land containing approximately 612 acres (in Herkimer County in the Adirondacks) which is described in the complaint by metes and bounds, is illegally occupied by the defendants. The source of plaintiff's title was a 1973 deed from Nature Conservancy for a consideration of \$783,000.00. Nature Conservancy derived title earlier in the same year by deed from Riders. They, in turn, were deeded the premises earlier in 1973 by Longstaff, who became the owner of the premises as devisee. His testator, in turn, became the owner 75 years ago. Riders and Longstaff, it is alleged, occupied the premises for use as a childrens' camp continuously for a period of upwards of 20 years prior to the deed to Nature Conservancy.<sup>3</sup> The lands in question, when acquired by the State of New York became part of the New York State Forest Preserve, subject to the constitutional, statutory and regulatory limitations imposed by the State of New York and specifically set forth in the complaint.<sup>4</sup>

The defendants are alleged to have violated the constitution, statutes and rules of the State of New York in relation to their occupancy of the premises, commencing on or about June 1, 1974 and continuing thereafter.<sup>5</sup>

The complaint thereafter alleges that the defendants claim to be members of the Mohawk Nation and assert entitlement to pos-

## Memorandum - Decision and Order.

session of the lands pursuant to the "Ganienkeh Manifesto". After setting up the claim of the defendants as indicated, the plaintiff alleges that the defendants have not been authorized by the Mohawk Nation or the Iroquois Confederation of Indian Nations to take possession of the lands and further alleges neither the Mohawk Nation nor the Iroquois Confederation have<sup>6</sup> "any right, title or interest in said occupied lands".

The complaint then goes on to trace the alleged history of the land and its alleged ownership from pre-revolutionary times. The complaint describes the participation of the Mohawk Indians in the Revolutionary War on the side of the British; the departure of the Mohawk Indians from the United States to Canada after the Revolutionary War; the grant by the British of<sup>7</sup> a 12,000 square mile tract in Ontario; the relinquishment of all lands in the United States by the Iroquois Confederation, except lands specifically ceded to the Confederation, not including the lands involved in this action, by the Treaty of Fort Stanwix on October 22, 1784, to which Treaty the Mohawk Indians refused to<sup>8</sup> be joined; a treaty of April 27, 1798 by which the Mohawk Nation ceded and released "to the people of the State of New York forever all the right or title of the said Nation to lands within the said State; and the claim of said Nation to lands within said State is hereby wholly and finally extinguished".<sup>9</sup> Since that treaty, the Mohawk Nation made no claim to the lands in question or other lands in the State of New York.

The 1798 treaty, it is alleged, "was a valid treaty, [and] complied with the Indian Non-Intercourse Act (now 25 U.S.C.



10  
Section 177)".

The complaint continues by alleging that the lands in question were patented by the State of New York and a patent was issued to one Alexander Macomb, from whom the grantors of the plaintiff trace their title.

The complaint concludes with the allegation that:

the claims of defendants (sic) that they are the owners of said land and their unlawful occupancy of said lands constitute a cloud on the title of the State of New York and constitute a violation of the right of the State of New York to exclusive possession of said land<sup>11</sup>

together with the prayer for relief.

#### Contentions

The defendants argue, in support of their motion to dismiss, that the suit is one between sovereign nations, disputing the ownership or sovereignty of land; that it involves a political matter not within the power of the court to adjudicate; and that, being in substance an action against the Mohawk Nation, the doctrine of sovereign immunity applies.

Plaintiff contends that the suit is within the jurisdiction of the court, as one arising "under the Constitution, laws or treaties of the United States", meeting the monetary limitations of 28 U.S.C. §1331(a). Since I find that the court lacks jurisdiction of the subject matter, although on grounds other than those urged by the defendants, it is unnecessary to discuss either  
<sup>12</sup>  
those grounds, or the basis or merits of the summary judgment motion.

## Memorandum - Decision and Order.

Lack of Jurisdiction

There is no dispute that a district court's jurisdiction is limited to grants of power contained in the Constitution and statutes. As indicated earlier, the plaintiff relies on 28 U.S.C. §1331, federal subject matter jurisdiction, in this case.

Stripped of all its excess verbiage, there clearly emerges from the complaint the elements of an ejectment action. The plaintiff claims that its lawful possession was interrupted by the unlawful takeover by the defendants. Although the action does not seek affirmative relief of ejectment in so many words, the only construction that can be placed on the request that the court grant a judgment "restoring possession of the premises to the plaintiff and that the defendants be barred from reentering possession of the same" is that the defendants be ejected from the premises and be ordered not to disturb the possession of the plaintiff.<sup>13</sup>

The allegations which seek a declaratory judgment and refer to 28 U.S.C. §§2201 and 2202 in no way bolster the plaintiff's jurisdictional grounds. It is Hornbook law that the declaratory judgment sections are not jurisdictional.<sup>14</sup>

<sup>15</sup>  
Taylor v. Anderson, whose viability was affirmed as recently as Oneida Indian Nation v. County of Oneida, 414 U.S. 661 (1974) compels a dismissal for lack of jurisdiction under the facts alleged in the complaint.<sup>16</sup>

The parties address themselves almost exclusively to the



## Memorandum - Decision and Order.

question of whether or not the defendants are occupying the land under authority of the Mohawk Nation and the legal consequences of such occupancy. The plaintiff finds support for "arising under" jurisdiction in Oneida Indian Nation, supra.

I read Oneida Indian Nation differently. Oneida Indian Nation, as I see it, not only supports the motion to dismiss for lack of "arising under" jurisdiction, but virtually compels it.

Oneida Indian Nation

In Oneida Indian Nation the Supreme Court, as distinguished from the lower courts, found that the plaintiffs in that case, in order to establish their possessory right to the lands in question, needed to rely on the alleged violation of the Non-Intercourse Act<sup>17</sup> set forth in their complaint; the lower courts having determined that the Non-Intercourse Act and its alleged violation arose in a<sup>18</sup> defensive posture in the first instance.

Oneida Indian Nation, however, re-affirmed the criteria by which "arising under" jurisdiction is tested. It held "that the complaint in this case asserts a present right to possession<sup>19</sup> under federal law". It re-affirmed that

for jurisdictional purposes this is not a case where the underlying right or obligation arises only under state law and federal law is merely alleged as a barrier to its effectuation, as was the case in Gully v. First National Bank, 299 U.S. 109 (1936).<sup>20</sup>

The Court further stated:

Nor in sustaining the jurisdiction of the District Court do we disturb the well-pleaded complaint rule of Taylor v. Anderson, supra, and like cases. Here, the right to possession itself is claimed to arise under federal law in the first instance. Allegedly, aboriginal title of an Indian tribe guaranteed by

## Memorandum - Decision and Order.

treaty and protected by statute has never been extinguished.<sup>21</sup>

The viability, necessity and rationale for compliance with these criteria are further bolstered by the concurring opinion of Justice Rehnquist, in which Justice Powell joined.

The majority opinion persuasively demonstrates that the plaintiffs' right to possession in this case was and is rooted firmly in federal law. Thus, I agree that this is not a case which depends for its federal character solely on possible federal defenses or on expected responses to possible defenses. I also agree that the majority decision is consistent with our decision in Gully v. First National Bank, 299 U.S. 109 (1936). However, I think it worthwhile to add a brief concurrence to emphasize that the majority opinion does not disturb the long line of this Court's cases narrowly applying the principles of 28 U. S. C. § 1331 and the well-pleaded complaint rule to possessory land actions brought in federal court. . . .

The federal courts have traditionally been inhospitable forums for plaintiffs asserting federal-question jurisdiction of possessory land claims. The narrow view of the scope of federal-question jurisdiction taken by the federal courts in such cases probably reflects a recognition that federal issues were seldom apt to be dispositive of the lawsuit. Commonly, the grant of a land patent to a private party carries with it no guarantee of continuing federal interest and certainly carries with it no indefinitely redeemable passport into federal court. On the contrary, as the majority points out, the land thus conveyed was generally subject to state law thereafter.

Thus, this Court's decisions have established a strict rule that mere allegation of a federal source of title does not convert an ordinary ejectment action into a federal case. As the Court noted in Shoshone Mining Co. v. Rutter, 177 U. S. 505, 507 (1900), 'a suit to enforce a right which takes its origin in the laws of the United States is not necessarily one arising under the Constitution or laws of the United States, within the meaning of the jurisdiction clauses, for if it did every action



to establish title to real estate (at least in the newer States) would be such a one, as all titles in those States come from the United States or by virtue of its laws.' This rule was even applied to cases in which land grants to Indians, subject to limited restrictions on alienation, were involved. See Taylor, supra.<sup>22</sup>

If the allegations in the plaintiff's complaint that the title to the land in question derives from a valid cession from the Mohawk Nation supports "arising under" jurisdiction, then the doors of this court will have been swung wide open to the claim of every litigant in a suit involving land in the United States, the chain of title to which shows it was initially occupied by an Indian tribe and thereafter lawfully ceded to the United States or one of the states. The final caveat of the concurring opinion makes clear that Oneida Indian Nation does not take the place of such jurisdiction-broadening legislation.

The opinion for the Court today should give no comfort to persons with garden-variety ejectment claims who, for one reason or another, are covetously eyeing the door to the federal courthouse. The general standards for determining federal jurisdiction, and in particular the standards for evaluating compliance with the well-pleaded complaint rule, will retain their traditional vigor tomorrow as today.<sup>23</sup>

#### Suit to Quiet Title

Apparently to avoid Taylor v. Anderson, supra, the plaintiff has characterized this as an action to remove a cloud on title, which is an equity action normally reserved for situations where common law ejectment is unavailable to an aggrieved landowner, because the plaintiff is still in possession.<sup>24</sup>

## Memorandum - Decision and Order.

This does not change the situation of which the plaintiff complains; the defendants have usurped its possession. That being the case, the legal remedy of ejectment lies, but the court is without jurisdiction to grant equitable relief.<sup>25</sup>

The plaintiff is not helped by New York Real Property Actions and Proceedings § 1515, eliminating the requirement of possession;<sup>26</sup> nor by the fact that jurisdiction is lacking for an ejectment action.<sup>27</sup>

The Town of Webb, in which such property is situated, and owners of nearby premises having a common source of title with the plaintiff, seek to intervene and file proposed complaints. The proposed complaints adopt and reallege the plaintiff's jurisdictional grounds and most of the substantive allegations of the complaint. In addition, the defendants under their claim of title are alleged to violate certain restrictive covenants running with the land. The petitioners for intervention seek substantially the same relief by way of ejection of the defendants from the premises as does the plaintiff. They also seek injunctive relief against violations of the restrictive covenants and damages.

The defendants oppose the motions for intervention. After hearing argument, decision was deferred pending the determination of the motions to dismiss and for summary judgment. Leave was granted the petitioners to file briefs and to be heard on the argument as amici. Having determined that the court lacks subject matter jurisdiction, no purpose would be served by inter-



## Memorandum - Decision and Order.

vention at this juncture. Accordingly, the motions to intervene  
28  
are denied.

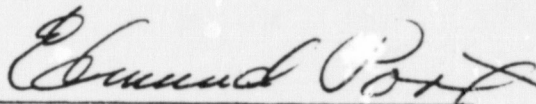
Order

For the reasons herein, it is

ORDERED, that judgment be entered dismissing the complaint  
for lack of jurisdiction; and it is further

ORDERED, that judgment be entered denying the plaintiff's  
motion for summary judgment; and it is further

ORDERED, that judgment be entered denying and dismissing  
the motions for intervention.



United States District Judge

Dated: March 27, 1975  
Auburn, New York

## Memorandum - Decision and Order.

## FOOTNOTES

<sup>1</sup>

The defendants individually make no claim to the land. They assert "the right to live on the land of the Mohawk Nation under the jurisdiction of the Six Nations". Defendants' reply memorandum, p. 18.

<sup>2</sup>

Complaint, paragraph 4. Although there is no reference made to the law of New York, the plaintiff appears to be trying to make out a case under (a) common law ejectment (see, N.Y. R.P.A.P.L. §§ 601 et seq; 13 Carmody Waite 2d § 89), (b) an equitable quiet title suit (see, 16 Carmody Waite 2d §§ 102 et seq), or (c) a statutory quiet title action (see, N.Y.R.P.A.P.L. §§ 1501 et seq, 16 Carmody Waite 2d §§ 101 et seq), or some combination of these remedies.

<sup>3</sup>

Complaint, paragraphs 6-8. See, complaint, Exhibit I (deed to New York State), plaintiff's hearing, Exhibits 3, 4.

<sup>4</sup>

These include provisions of the New York State Constitution Article XIV, § 1; N.Y. Environmental Conservation Law (ENCON) § 9-0105; 6 NYCRR § 190 pertaining to Adirondack parklands.

<sup>5</sup>

To the extent that the rules of the ENCON department are sought to be enforced (complaint, paragraphs 10, 11) and ejectment



## Memorandum - Decision and Order.

granted on behalf of this particular New York State agency, the plaintiff appears to be relying on N.Y. ENCON § 9-0105(2)(b)(c) authorizing such suits in the state courts. This becomes all the more apparent by the affidavit of competency to sue attached to the complaint, which is signed by James Biggane, the Commissioner of ENCON.

6

Complaint, paragraphs 12, 13. The Ganienkeh Manifesto is reproduced in complaint Exhibit II. Insofar as the question of defendants' authority is concerned (see, Appendixes A, B of defendants' memorandum in support of motion to dismiss; plaintiff's hearing Exhibit 1, 2; defendants' Exhibit A; Affidavit of Robert Coulter, paragraphs 2, 6, 7 (attached to defendants' reply memorandum). It is conceded by all parties that the defendants, Indian or otherwise, are individuals rather than a body corporate or body politic (tribe). Because of the disposition herein, there is no need to reach the question whether the defendants herein have permission to stay on the land conferred by an alleged absentee-owner Indian tribe. The tribe itself has not come into the suit; nor have the plaintiff or defendants sought to bring the tribe in.

7

Complaint, paragraphs 14, 19.

8

Complaint, paragraphs 20, 21. The treaty of 1784 is reproduced in complaint Exhibit III.

## Memorandum - Decision and Order.

9  
Complaint, paragraph 22. The treaty of 1798 is re-produced in complaint Exhibit IV, p. 2.

10  
Complaint, paragraph 24.

11  
Complaint, paragraph 28.

12  
See, generally The Cherokee Nation v. Georgia, 5 Pet. 1 (1831).

13  
This is a classic ejectment claim. Cincinnati v. White, 31 U.S. 431, 442 (1832); Weiss v. Goffan, 207 N.Y.S. 2d 163, 26 Misc.2d 988 (N.Y. Sup. Ct. 1960). See, 13 Carmody Waite 2d § 89.2. Plaintiff does not seek damages specifically, but such might be awarded under the prayer for "such other and further relief as to the Court seems just and proper".

14  
Skelly Oil v. Phillips Petroleum Co., 339 U.S. 667 (1950).

15  
234 U.S. 74 (1914).

16  
See, also, Phillips Petroleum Co. v. Texaco, Inc., 415 U.S. 125 (1974).

17  
25 U.S.C. § 177 and its predecessor.

18  
Oneida Indian Nation of New York State v. Oneida County, 70 CV 35 (N.D.N.Y. November 11, 1971) aff'd 464 F.2d 916 (2nd Cir. 1972) rev'd & rem. 414 U.S. 661 (1974).



19 414 U.S. at 675.

20 414 U.S. at 675.

21 414 U.S. at 676.

22 414 U.S. at 682-84.

23 Id.

24 Whitehead v. Shattuck, 138 U.S. 146, 151 (1891); Fort Mojave Tribe v. LaFollette, 478 F.2d 1016, 1018 n. 3 (9th Cir. 1973). See, New Jersey & N.C. Land & Lumber Co. v. Gardner-Lacy Lumber Co., 178 F. 772 (4th Cir. 1910); A. G. Winerman & Sons v. Reeves, 245 F. 254 (5th Cir. 1917). See, Oneida Indian Nation, supra, 464 F.2d at 921-22, rev'd on other grounds, 414 U.S. 661 (1974). The plaintiff's characterization is not necessarily controlling. City of Syracuse v. Hogan, 234 N.Y. 457, 138 N.E. 406 (1923).

25 Whitehead v. Shattuck, supra, Oneida Indian Nation, supra, 464 F.2d at 921, 922 rev'd on other grounds, 414 U.S. 661 (1974).

## JUDGMENT APPEALED FROM.

JUDGMENT ON DECISION BY THE COURT

CIV 32 (7-63)

## United States District Court

FOR THE

NORTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. 74-CV-370

THE STATE OF NEW YORK,

Plaintiff

-against-

DANNY WHITE, PAUL WHITE, JR., PAUL WHITE  
and NORMA WHITE, his wife, LORRAINE MONTOUT,  
THOMAS DELARANDE and LORRAINE DELARANDE, his  
wife, JOHN HEMLOCK, ALLEN HEMLOCK, DIANE  
HEMLOCK, EARL FRANCIS CROSS, CHRISTOPHER  
HEMLOCK, ANGUS DEER, DAVID DEER, DAVID  
DEERHOUSE, WARREN DEER, JIMMY DEER, PAUL  
WILLIAMS, ALEX AKWIENZIE, TOM COOK, DOUGLAS  
PINE, ANNIE JOCK, "JOHN" GAMBLE, first name  
John being fictitious, real first name not  
being known to plaintiff, person intended  
being in possession of State land in Town of  
Webb, Herkimer County; "JOHN DOE", "RICHARD  
ROE", "RITA ROE", "GERALD GOE", "JANE COE",  
"SAM FOE", "GLADYS HOE", "AL JOE", "JANE DOE",  
"SUE WOE", "PETER MOE", "PHILIP SOE", "CAROL  
ZOE", "DONALD POE", "FRED MOE", "BOB BOE",  
"WARREN KOE", "BILL VOE", and "JOE WOE", true  
names of parties being unknown, parties intended  
being in possession of State land in the Town of  
Webb, Herkimer County,

JUDGMENT

Defendants.

This action came on for ~~xxxx~~(hearing) before the Court, Honorable Edmund Port

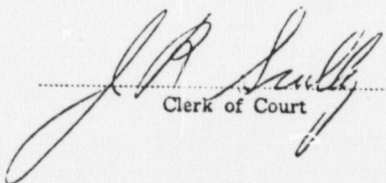
, United States District Judge, presiding, and the issues having been duly ~~xxxx~~  
(heard) and a decision having been duly rendered,

It is Ordered and Adjudged

complaint is dismissed, plaintiff's motion for summary  
judgment is denied, and motions for intervention are  
denied and dismissed.

Dated at Utica, New York  
of March , 19 75

, this 28th day

  
Clerk of Court



## NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

---

THE STATE OF NEW YORK,

Plaintiff,

-against-

DANNY WHITE, PAUL WHITE, JR., PAUL WHITE and  
NORMA WHITE, his wife, LORRAINE MONTOUR, THOMAS  
DELARANDE and LORRAINE DELARANDE, his wife,  
JOHN HEMLOCK, ALLEN HEMLOCK, DIANE HEMLOCK,  
EARL FRANCIS CROSS, CHRISTOPHER HEMLOCK, ANGUS  
DEER, DAVID DEER, DAVID DEERHOUSE, WARREN DEER,  
JIMMY DEER, PAUL WILLIAMS, ALEX AKWIENZIE,  
TOM COOK, DOUGLAS PINE, ANNIE JOCK, "JOHN"  
GAMBLE, first name John being fictitious, real  
first name not being known to plaintiff, person  
intended being in possession of State land in  
Town of Webb, Herkimer County; "JOHN DOE", "RICHARD  
ROE", "RITA ROE", "GERALD GOE", "JANE COE", "SAM  
FOE", "GLADYS HOE", "AL JOE", "JANE DOE", "SUE  
WOE", "PETER MOE", "PHILIP SOE", "CAROL ZOE",  
"DONALD POE", "FRED MOE", "BOB BOE", "WARREN KOE",  
"BILL VOE", and "JOE WOE", true names of parties  
being unknown, parties intended being in possession  
of State land in the Town of Webb, Herkimer County,

Defendants.

CIVIL ACTION  
FILE NO.

74-CV-370

NOTICE OF APPEAL

---

Notice is hereby given that the State of New York, plaintiff  
above named, hereby appeals to the United States Court of Appeals  
for the Second Circuit from the final judgment and order dismissing

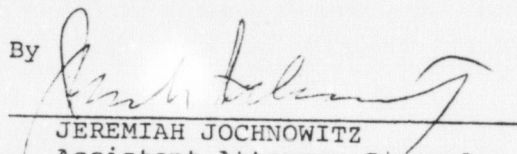
Notice of Appeal.

the complaint for lack of jurisdiction and denying plaintiff's motion for summary judgment, entered in this action on March 28, 1975.

Dated: April 24, 1975

LOUIS J. LEFKOWITZ  
Attorney General of the  
State of New York  
Attorney for Plaintiff  
Office and P.O. Address  
The Capitol  
Albany, New York 12224

By

  
JEREMIAH JOCHNOWITZ  
Assistant Attorney General

TO: Clerk of the United States District  
Court for the Northern District  
of New York  
Federal P.O. Building  
Utica, New York 13503

NANCY STEARNS, ESQ.  
c/o Center for Constitutional Rights  
853 Broadway  
New York, New York 10003  
Attorney for Defendants

ROBERT T. COULTER, ESQ.  
3240 19th Street, N.W.  
Washington, D.C. 20010  
Attorney for Defendants

FOLEY & FRYE, ESQS.  
185 Genesee Street  
Utica, New York 13501  
Attorneys for Applicant for  
Intervention, Town of Webb

WILLIAM J. FOLEY, ESQ.  
of Counsel



## Notice of Appeal.

HANCOCK, ESTABROOK, RYAN,  
SHOVE & HUST, ESQS.  
One Mony Plaza  
Syracuse, New York 13202  
Attorneys for Applicants for  
Intervention, Douglas Bennett,  
Bonnie Bennett and Big Moose  
Property Owners Association  
HAMILTON S. WHITE, ESQ.  
of Counsel

## Affidavit of Service.

STATE OF NEW YORK )  
 COUNTY OF ALBANY ) ss.:  
 CITY OF ALBANY )

Colleen Ackel, being duly sworn, says:

I am a Notary Public in the office of  
 the Attorney General of the State of New York, attorney for the  
Plaintiff herein.

On the 24th day of April, 1975, I served the annexed  
Notice of Appeal upon the attorneys named below, by depositing  
 a true copy thereof, properly enclosed in a sealed postpaid  
 wrapper, in the letter box of the Capitol Station post office in  
 the City of Albany, New York, a depository under the exclusive care  
 and custody of the United States Post Office Department, directed  
 to the said attorneys at the addresses within the State respec-  
 tively theretofore designated by them for that purpose, as follows:

Nancy Stearns, Esq.  
 c/o Center for Constitutional Rights  
 853 Broadway  
 New York, New York 10003

Robert T. Coulter, Esq.  
 3240 19th Street, N.W.  
 Washington, D.C. 20010

Foley & Frye, Esqs.  
 185 Genesee Street  
 Utica, New York 13501

Hancock, Estabrook, Ryan, Shove & Hust, Esqs.  
 One Mony Plaza  
 Syracuse, New York 13202

Sworn to before me this  
24th day of April, 1975.

Colleen Ackel

John E. Shea  
 Notary Public or Assistant  
 Attorney General

JOHN E. SHEA  
 Notary Public, State of New York  
 No. 4509228  
 Qualified in Albany County  
 Commission Expires March 26, 1977



## NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

-----  
THE STATE OF NEW YORK,

Plaintiff

v.

DANNY WHITE, et al.,

Defendants

DOUGLAS L. BENNETT, BONNIE L. BENNETT  
and BIG MOOSE PROPERTY OWNERS  
ASSOCIATION,

Applicants for  
Intervention  
-----

:  
:  
: Civil Action  
: File #74-CV-370  
:  
:  
:  
:  
:  
:  
:

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Douglas L. Bennett, Bonnie L. Bennett and Big Moose Property Owners Association, applicants for intervention, hereby appeal to the United States Court of Appeals for the Second Circuit from the judgment entered in this action on the 28th day of March, 1975 dismissing the original complaint herein, denying the motion of the plaintiff for summary judgment, denying and dismissing the motions for intervention and from each and every part of said judgment.

Dated: April 25, 1975

Yours, etc.

*Harold Estabrook Ryan Shaw & Hurl*  
MANCOCK, ESTABROOK, RYAN, SHAW & HURL  
Attorneys for Douglas L. Bennett, Bonnie  
L. Bennett, Big Moose Property Owners  
Association  
Office and P. O. Address  
One Mony Plaza  
Syracuse, New York 13202  
(315) 471-3151

Notice of Appeal.

TO: HON. JAMES R. SCULLY, Clerk  
United States District Court  
Federal Building  
Utica, New York

HON. LOUIS J. LEFROWITZ  
Attorney General for State  
of New York  
Attorney for Plaintiff  
The Capitol  
Albany, New York 12224

NANCY STEARNS, ESQ.  
Attorney for Defendants  
c/o Center for Constitutional Rights  
853 Broadway  
New York, New York 10003

ROBERT T. COULTER, ESQUIRE  
Attorney for Defendants  
3240 19th Street, N.W.  
Washington, D. C. 20010

FOLEY & FRYE, ESQUIRES  
Attorneys for Applicant for  
Intervention, Town of Webb  
185 Genesee Street  
Utica, New York 13501



## RECORD INDEX

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

THE STATE OF NEW YORK	:	
Plaintiff-Appellant	:	
vs	:	Northern District of
DANNY WHITE, et al	:	New York
Defendant-Appellee	:	Civil No. 74-CV-370

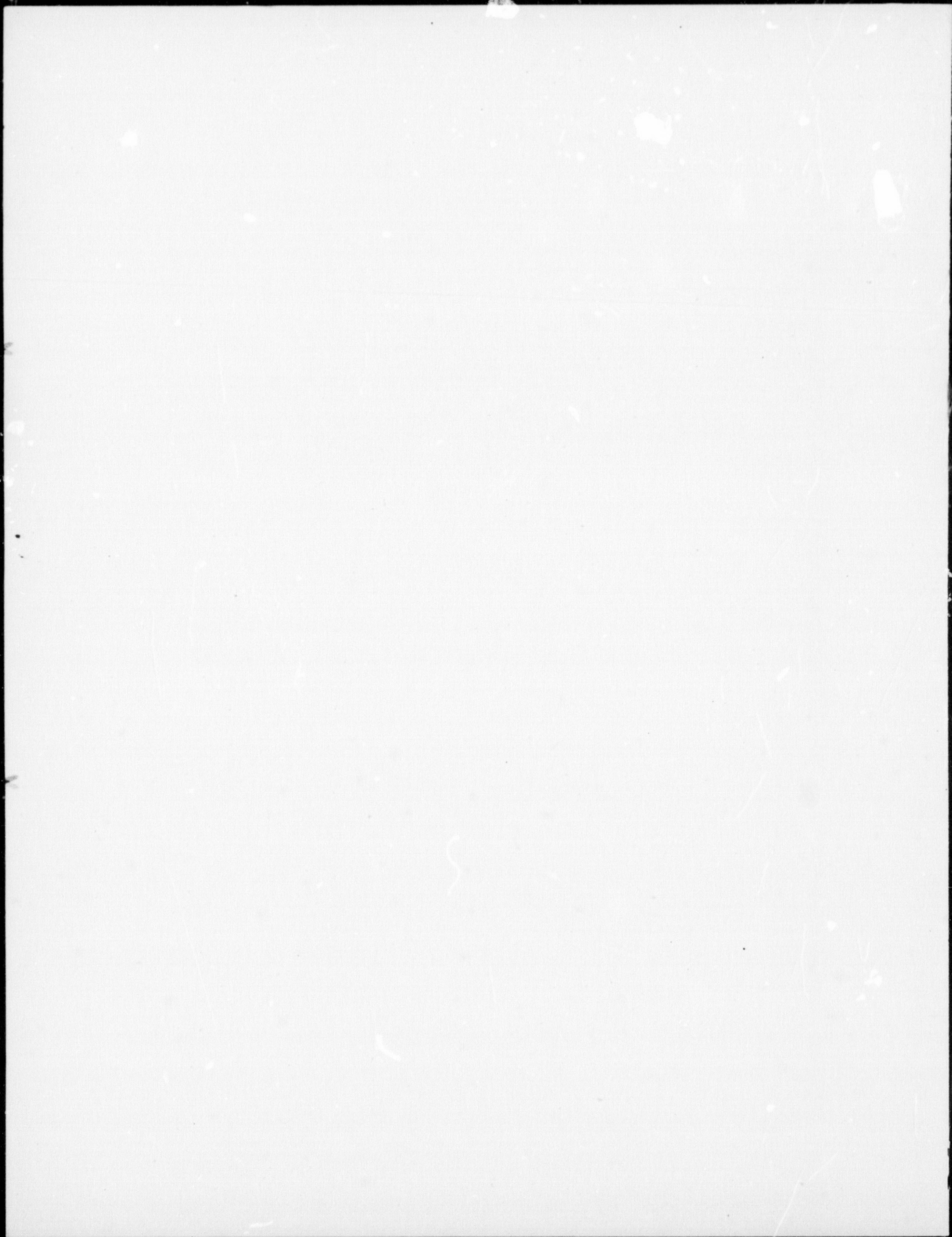
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Danny White, et al.,  
Defendants-Appellees,

-against-

The State of New York,  
Plaintiff-Appellant.

STATE OF NEW YORK)  
COUNTY OF ALBANY ) ss.:  
CITY OF ALBANY )

Beverly J. Smith, being duly sworn, says:

I am over eighteen years of age and a typist  
in the office of the Attorney General of the State of New York, attorney  
for the plaintiff-appellant herein.

On the 11th day of June 1975 I served  
the annexed appendix upon the  
attorney s named below, by depositing one copy thereof,  
properly enclosed in a sealed, postpaid wrapper, in the letter box  
of the Capitol Station post office in the City of Albany, New York,  
a depository under the exclusive care and custody of the United States  
Post Office Department, directed to the said attorney s at the  
address es within the State respectively theretofore designated by  
them for that purpose as follows:

Nancy Stearns  
853 Broadway  
N.Y., N.Y. 10003

Robert T. Coulter  
3240 19th St., NW  
Washington, D.C. 20010

Foley & Frye  
185 Genesee St.  
Utica, N.Y. 13501

Hancock, Estabrook, Ryan,  
Shove & Hust  
One Mony Plaza  
Syracuse, N.Y. 13202

Sworn to before me this

11th day of June 1975

Frederick R. Walsh

Beverly J. Smith

FREDERICK R. WALSH  
Notary Public in the State of New York,  
Qualified in Albany County,  
Commission expires March 30, 1977